S. HRG. 101-39

SETTLEMENT OF LAND CLAIMS OF PUYALLUP TRIBE OF INDIANS IN THE STATE OF WASHINGTON

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 402

TO PROVIDE FOR THE SETTLEMENT OF LAND CLAIMS OF THE PUYALLUP TRIBE OF INDIANS IN THE STATE OF WASHINGTON

FEBRUARY 24, 1989
WASHINGTON, DC

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SETTLEMENT OF LAND CLAIMS OF PUYALLUP TRIBE OF INDIANS IN THE STATE OF WASHINGTON

FRIDAY, FEBRUARY 24, 1989

U.S. SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
Washington, DC

The committee met, pursuant to notice, at 9:35 a.m., in room 485, Russell Senate Office Building, Hon. Kent Conrad (acting chairman of the committee) presiding.

Present: Senator Conrad.

Also present: Senators Adams, Gorton, and Representative Dicks.

Staff present: Patricia Zell, chief counsel; Eric Eberhard, minority staff director; Alan Parker, staff director; Dave McIntyre, professional staff member; Lynn Toledo, clerk; and Linda Williams, clerk.

STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. This hearing before the Senate Select Committee on Indian Affairs will come to order.

Good morning and welcome to this hearing of the Select Committee on Indian Affairs on S. 402, a bill to provide for the settlement of the land claims of the Puyallup Indian Tribe.

Chairman Inouye has asked me to convey his personnel regrets that he is unable to be here with us today, that illness has prevented him from returning to Washington. I know that his involvement in the settlement negotiations has been an inspiration to some of you, when the prospects for settlement appeared dim. And I know that you join me in wishing him a full and speedy recovery.

This morning we consider a landmark settlement of claims that have been the subject of litigation since the early 1960s. We know that the process of negotiation, commenced in the 98th Congress, has followed a long and sometimes tortuous route. And so, today we want to commend all of the parties for their patience and their perseverance, and for the example that they have set for Indian and non-Indian communities around the country—the model of working together to resolve problems of mutual concern, rather than continue the pursuit of lengthy and costly litigation.

This settlement is indeed a model for the spirit of that cooperation, containing, as it does, the process for government-to-government consultation and dispute resolution, a plan for the co-management of natural resources and environmental regulation, and a framework for coordinated jurisdiction over lands and resources.

The settlement also successfully achieves the Federal and non-Federal balance of contributions that is advocated in the administration's policy objectives for negotiated settlements. But most important, this settlement/agreement provides the means for the Puyallup Tribe to live peacefully with its non-Indian neighboring communities, and to explore as partners the future of the Tacoma area.

[Text of S. 402 follows.]

II

101ST CONGRESS
1ST SESSION

S. 402

To provide for the settlement of land claims of the Puyallup Tribe of Indians in the State of Washington, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9 (legislative day, JANUARY 3), 1989

Mr. ADAMS (for himself and Mr. GORTON) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To provide for the settlement of land claims of the Puyallup Tribe of Indians in the State of Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Puyallup Tribe of Indians Settlement Act of 1989".

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that:

(1) It is the policy of the United States, in executing the Constitution and fulfilling its trust responsibility to Indian tribes, to promote tribal self-determination

and economic self-sufficiency and to support the resolution of disputes over historical claims through settlements mutually agreed to by Indian and non-Indian parties.

(2) Disputes over certain land claims of the Puyallup Tribe and other matters, including—

(A) ownership of the Commencement Bay tidelands and areas of former Puyallup Riverbed, Treaty Reservation, or intended reservation boundaries,

(B) railroad and other rights-of-way,

(C) control of fisheries resource and habitat,

(D) jurisdiction over law enforcement, environment, navigation, and authority and control in the areas of land use,

(E) business regulation and zoning,

have resulted in difficult community relations and negative economic impacts affecting both the Tribe and non-Indian parties.

(3) The United States Government through acts of omission and commission, and through inconsistent policies, contributed significantly to the historical events that have led to the disputed claims that have preceded the present settlement between the Puyallup Tribe of Indians, city of Tacoma, city of Fife, city of

Puyallup, Pierce County, Port of Tacoma, State of Washington, and certain private interests and property owners.

(4) Some of the significant historical events that led to the present circumstances include—

(A) the negotiation of the Treaty of Medicine Creek in December 1854, by the Puyallup Indians and others, ceded most of their territories but reserved certain lands and rights, including fishing rights;

(B) the Executive order of 1857 creating the Puyallup Indian Reservation;

(C) the Executive order of 1873, clarifying and extending the Puyallup Reservation in the Washington Territory;

(D) the March 11, 1891 Report of the Puyallup Indian Commission on allotments and the 1896 report by a second Puyallup Indian Commission describing the problems with sales of allotted lands; and

(E) the 1909 District Court for Tacoma decision of United States of America against J.M. Ashton and the 1910 Supreme Court decision of United States of America against J.M. Ashton.

(5) In the recent history of these affairs, certain events have occurred of significance preceding the finalization of the present agreement, including—

(A) a July 1981 United States district court ruling, Puyallup Tribe against Port of Tacoma, affecting the former riverbed;

(B) an August 1983 decision by the Ninth United States Circuit Court of Appeals upholding the 1981 United States district ruling;

(C) the beginning of negotiations in August 1984 between the Puyallup Tribe and a newly formed non-Indian negotiating team, leading to a first settlement offer to the Tribe on March 1, 1985, and rejected by the Tribal Council;

(D) a new settlement offer reached in principle by all parties was defeated in a vote by the Tribal membership on February 8, 1986; and

(E) new negotiations began leading to the successful development of a settlement agreement, approved by the Puyallup Tribal membership on August 27, 1988.

(6) It is recognized that both Indian and non-Indian parties enter into this settlement to resolve certain problems and claims and to derive certain benefits:

5

(A) It is the view of the Puyallup Tribe that historical injustices have been imposed upon its members through actions by Federal, State, local, and private entities. The Tribe enters into the settlement not as a means to completely redress past injustices, but as a responsible action to ensure a positive future for its members. The Tribe further recognizes that the economic benefits that are provided in the settlement, including payments to its members, funds to address Tribal human needs, funds to start business enterprises and job assistance, and land conveyances will enhance the prospects of Tribal economic stability and self-sufficiency. It is further recognized by the Tribe that jurisdiction over existing and future trust lands, the ability to place additional lands into trust, and the retention of existing treaty rights will have positive impacts upon the future of its members.

(B) It is the view of the non-Indian parties that historical land claims and disputes carried to the present day have been injurious to the development and growth of the affected communities and has inhibited business interests and the creation of jobs in the area. The non-Indian parties further assert that land and jurisdictional disputes

that are subject to lengthy litigation cannot serve the interests of the public or the future of the community and believe that it is best for all parties affected to take actions to remove such disputes as an impediment to future success. The non-Indian community believes that the provisions of the settlement, through agreement, cooperation, and clarification of issues, serve to enhance property values, stimulate economic investment, promote port development, permit local governments to engage in long-term community planning, and provide a pragmatic framework for the positive resolution of future conflicts.

(7) There is a recognition that any final resolution of pending disputes through a process of litigation would take many years and entail great expense to all parties; continue economically and socially damaging controversies; prolong uncertainty as to the access, ownership, and jurisdictional status of issues in question; and seriously impair long-term economic planning and development for all parties.

(8) To advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the community, and to advance the Federal policy of international trade and economic develop-

ment, and in recognition of the Federal policy of settling these conflicts through comprehensive settlement agreements, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for such purpose.

(b) PURPOSE.—Therefore, it is the purpose of this Act—

(1) to approve, ratify, and confirm the agreement entered into by the non-Indian settlement parties and the Puyallup Tribe of Indians,

(2) to authorize and direct the Secretary to execute and perform such agreement, and

(3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the community as provided in the settlement agreement and this Act.

SEC. 3. RESOLUTION OF PUYALLUP TRIBAL LAND CLAIMS.

(a) RELINQUISHMENT.—In accordance with the Settlement Agreement and in return for the land and other benefits derived from the Settlement Agreement and this Act, the Tribe, and the United States as trustee for the Tribe and its members, relinquish all claims to any land, present or former tidelands, submerged lands, mineral claims, and nonfisheries water rights connected with such relinquished land, known or

unknown, within the State of Washington, subject to the exceptions referred to in subsection (b).

(b) EXCEPTION FOR CERTAIN LANDS.—Subsection (a) shall not apply to the following:

(1) 12.5 acres of former riverbed land confirmed to the Tribe in Puyallup Tribe of Indians against Port of Tacoma (Western District of the United States District Court for the State of Washington, Cause Numbered C80–164T), which land shall be subject to the terms and conditions described in the Settlement Agreement and document 6 of the Technical Documents.

(2) All land to which record title in the Tribe or the United States in trust for the Tribe or its members derives from a patent issued by the United States or from a conveyance of tideland by the State of Washington. For the purposes of this paragraph, the term "record title" means title documented by identifiable conveyances reflected in those records imparting constructive notice of conveyances according to the laws of the State (RCW chapters 65.04 and 65.08) and the final judgments of State or Federal courts.

(3) Certain land recognized to be owned on August 27, 1988, by the Tribe or the United States in trust for the Tribe within the Indian Addition to the

city of Tacoma, Washington, as recorded in book 7 of plats at pages 30 and 31, records of Pierce County, Washington, as follows:

(A) Land owned on August 27, 1988:

(i) Portions of tracts 2, 5, 6, 10, and 11.

(ii) Tract 7 (school site).

(iii) Tract 8 (church site).

(iv) Tract 9 (cemetery site).

(v) Approximately 38 lots in blocks 8150, 8249, 8350, and 8442, inclusive.

(B) Land, wherever located, added to the above list of parcels on or before December 1, 1988, in accordance with paragraph A.3. of section IX of the Settlement Agreement.

(4) The lands transferred to the Tribe pursuant to the Settlement Agreement.

(5) The rights to underlying lands or the reversionary interest of the Tribe, if any, in the Union Pacific or Burlington Northern rights-of-way across the 1873 Survey Area, where the property over which they were granted belonged, at the time of the grant, to the United States in trust for the Tribe or to the Tribe.

(6) The submerged lands as of August 27, 1988, in the Puyallup River within the 1873 Survey Area below the mean high water line.

(c) PERSONAL CLAIMS.—Nothing in this section or in the Settlement Agreement shall be construed to impair, eliminate, or in any way affect the title of any individual Indian to land held by such individual in fee or in trust, nor shall it affect the personal claim of any individual Indian as to claims regarding past sales of allotted lands or any claim which is pursued under any law of general applicability that protects non-Indians as well as Indians.

SEC. 4. SETTLEMENT LANDS.

(a) ACCEPTANCE BY SECRETARY.—The Secretary shall accept the conveyance of the lands described in subsection (c), and the Outer Hylebos tidelands property referred to in section VIII, A,1,c of the Settlement Agreement, subject to the terms and conditions of the Settlement Agreement and shall hold such lands in trust for the benefit of the Tribe.

(b) CONTAMINATION.—(1) Contamination audits and cleanup of settlement lands shall be carried out in accordance with the Settlement Agreement and document 1 of the Technical Documents.

(2) The Tribe shall not be liable for the cleanup costs or in any other manner for contamination on properties described in subsection (c) except any contamination caused by

the Tribe's activities after conveyance of these properties to the Tribe under the terms of the Settlement Agreement and document 1 of the Technical Documents.

(c) LANDS DESCRIBED.—The lands referred to in subsection (a), and more particularly described in the Settlement Agreement, are as follows:

(1) The Blair Waterway property, comprised of approximately 43.4 acres.

(2) The Blair Backup property, comprised of approximately 85.2 acres.

(3) The Inner Hylebos property, comprised of approximately 72.9 acres.

(4) The Upper Hylebos property, comprised of approximately 5.9 acres.

(5) The Union Pacific property (Fife), comprised of a parcel of approximately 57 acres, and an adjoining 22-acre parcel if the option relating to the Union Pacific property (Fife) (as described in document 1 of the Technical Documents) is exercised.

(6) The Torre property (Fife), comprised of approximately 27.4 acres, unless the Port elects to provide the cash value of such property.

(7) The Taylor Way and East-West Road properties, two properties totaling approximately 7.4 acres.

(8) The submerged lands in the Puyallup River within the 1873 Survey Area below the mean high water line, as provided in section I. B. of the Settlement Agreement. To the extent that the United States has title to any of the lands described in this subpart, then such lands shall be held by the United States in trust for the use and benefit of the Puyallup Tribe.

(9) The approximately 600 acres of open space, forest, and cultural lands acquired by the Tribe with cash received pursuant to section I of the Settlement Agreement or other tribal funds.

(d) RESERVATION STATUS.—Nothing in this Act is intended to affect the boundaries of the Puyallup Reservation, except that the lands described in subsection (c) above in paragraphs (1) through (8), and the Outer Hylebos tidelands property referred to in section VIII of the Settlement Agreement, shall have on-reservation status.

SEC. 5. FUTURE TRUST LANDS.

In accepting lands in trust (other than those described in section 4) for the Puyallup Tribe or its members, the Secretary shall exercise the authority provided him in section 5 of the Act of June 18, 1934 (25 U.S.C. 465), and shall apply the standards set forth in part 151 of title 25, Code of Federal Regulations, as those standards now exist or as they may be amended in the future.

SEC. 6. FUNDS TO MEMBERS OF PUYALLUP TRIBE.

(a) PAYMENT TO INDIVIDUAL MEMBERS.—(1) To the extent provided in advance in appropriation Acts or to the extent funds are provided by other parties to the Settlement Agreement, the Secretary shall place with a financial institution the amount of $24,000,000 in an annuity fund or other investment program (hereafter in this subsection referred to as the "fund"). The selection of the institution or institutions where the funds will be held and the administration of the funds shall be in accordance with section II of the Settlement Agreement and documents 2 and 3 of the Technical Documents. Amounts earned pursuant to any investment of the fund shall be added to, and become part of, the fund.

(2) Upon attaining the age of 21 years, each enrolled member of the Tribe (determined by the Tribe pursuant to its constitution to have been a member as of the date of ratification of the Settlement Agreement by the Tribe) shall receive a one-time payment from the fund. The amount of such payment shall be determined in accordance with section II of the Settlement Agreement and document 2 of the Technical Documents.

(3) A reasonable and customary fee for the administration of the fund may be paid out of the income earned by the fund to the financial institution with which the fund is established.

(4) Upon payment to all eligible members of the Tribe pursuant to paragraph (1), any amount remaining in the fund shall be utilized in the manner determined by a vote of the members of the Tribe.

(b) PERMANENT TRUST FUND FOR TRIBAL MEMBERS.—(1) In order to provide a permanent resource to enhance the ability of the Tribe to provide services to its members, there is established the Puyallup Tribe of Indians Settlement Trust Fund (hereafter in this subsection referred to as the "trust fund").

(2) Upon appropriation by Congress or to the extent funds are provided by other parties to the Settlement Agreement, the Secretary shall deposit $22,000,000 into the trust fund. The trust fund shall be invested in accordance with the Act of June 24, 1938 (25 U.S.C. 162a), so as to earn the maximum interest on principal and interest available under that Act. No part of the $22,000,000 principal may be expended for any purpose. Income earned on the principal or interest of the trust fund shall be available for expenditure as provided in paragraph (3).

(3)(A) The trust fund shall be administered and the funds shall be expended in accordance with section III of the Settlement Agreement and document 3 of the Technical Documents. Income from the trust fund may be used only for the

following purposes unless modified in accordance with subparagraph (B):

(i) Housing.

(ii) Elderly needs.

(iii) Burial and cemetery maintenance.

(iv) Education and cultural preservation.

(v) Supplemental health care.

(vi) Day care.

(vii) Other social services.

(B) The purposes of the trust fund may be modified only as provided in document 3 of the Technical Documents.

(4) The fund established under this subsection shall be in perpetuity and inviolate.

SEC. 7. FISHERIES.

In order to carry out the Federal part of the fisheries aspect of the Settlement Agreement, there is authorized to be appropriated $100,000 for navigation equipment at Commencement Bay to be used in accordance with section A of document 4 of the Technical Documents.

SEC. 8. ECONOMIC DEVELOPMENT AND LAND ACQUISITION.

(a) ECONOMIC DEVELOPMENT AND LAND ACQUISITION FUND.—To the extent provided in advance in appropriation Acts, the Secretary shall disburse $10,000,000 to the Tribe of which—

(1) $9,500,000 shall be available for the Tribe to carry out economic development consistent with section VI of the Settlement Agreement or to acquire lands; and

(2) $500,000 shall be available only to support and assist the development of business enterprises by members of the Tribe in a manner consistent with the Settlement Agreement.

(b) FOREIGN TRADE.—The Congress recognizes the right of the Tribe to engage in foreign trade consistent with Federal law and notwithstanding Article XII of the treaty with the Nisqually and other bands of Indians entered into on December 26, 1854, and accepted, ratified, and confirmed on March 3, 1855 (11 Stat. 1132).

(c) BLAIR PROJECT.—There is authorized to be appropriated $25,500,000 for the Federal share of the costs associated with the Blair project, which shall be carried out in accordance with document 6 of the Technical Documents.

SEC. 9. JURISDICTION.

The Tribe shall retain and exercise jurisdiction, and the United States and the State and political subdivisions thereof shall retain and exercise jurisdiction, as provided in the Settlement Agreement and Technical Documents and, where not provided therein, as otherwise provided by Federal law.

SEC. 10. MISCELLANEOUS PROVISIONS.

(a) LIENS AND FORFEITURES, ETC.—None of the funds, assets, or income—

(1) from the trust fund established in section 6(b) which are received by the Tribe under the Settlement Agreement, or

(2) which are held under section 6(a) for payment to members of the Tribe under the Settlement Agreement,

shall be subject to levy, execution, forfeiture, garnishment, lien, encumbrance, or seizure.

(b) ELIGIBILITY FOR FEDERAL PROGRAMS; TRUST RESPONSIBILITY.—Nothing in this Act or the Settlement Agreement shall affect the eligibility of the Tribe or any of its members for any Federal program or the trust responsibility of the United States and its agencies to the Tribe and members of the Tribe.

(c) PERMANENT TRUST FUND NOT COUNTED FOR CERTAIN PURPOSES.—None of the funds, assets, or income from the trust fund established in section 6(b) shall at any time be used as a basis for denying or reducing funds to the Tribe or its members under any Federal, State, or local program.

(d) TAX TREATMENT OF FUNDS AND ASSETS.—None of the funds or assets transferred to the Tribe or its members by the Settlement Agreement, and none of the interest

earned or income received on amounts in the funds established under section 6 (a) and (b), shall be deemed to be taxable, nor shall such transfers be taxable events.

SEC. 11. ACTIONS BY THE SECRETARY.

The Secretary in administering this Act shall be aware of the trust responsibility of the United States for the Tribe and shall take such actions as may be necessary or appropriate to carry out this Act and the Settlement Agreement.

SEC. 12. DEFINITIONS.

For the purposes of this Act—

(1) the term "1873 Survey Area" means the area which is within the area demarked by the high water line as meandered and the upland boundaries, as shown on the plat map of the 1873 Survey of the Puyallup Indian Reservation, conducted by the United States General Land Office, and filed in 1874;

(2) the term "Secretary" means the Secretary of the Interior;

(3) the term "Settlement Agreement" means the document entitled "Agreement between the Puyallup Tribe of Indians, local Governments in Pierce County, the State of Washington, the United States of America, and certain private property owners", dated August 27, 1988;

(4) the term "State" means the State of Washington;

(5) the term "Technical Documents" means the 7 documents which comprise the technical appendix to the Settlement Agreement and are dated August 27, 1988;

(6) the term "Tribe" means the Puyallup Tribe of Indians, a tribe of Indians recognized by the United States; and

(7) the term "below the mean high water line" in reference to the submerged lands of the Puyallup Riverbed means "below the ordinary high water mark" in that portion of the river not subject to tidal influence and "below the mean high water line" in that portion of the river which is subject to tidal influence.

SEC. 13. EFFECTIVE DATE.

Sections 3 and 9 shall take effect on the effective date of the Settlement Agreement and when all terms are met as stated under section X of the Settlement Agreement.

Senator CONRAD. Our first panel of witnesses today consists of the distinguished Senators from the State of Washington, Senator Brock Adams, and Senator Slade Gorton, and Congressman Norm Dicks, who has played an instrumental role in achieving this settlement.

Following your presentations, gentlemen, I'll ask you to join me on the dias, and Senator Adams and Senator Slade Gorton will then co-chair the remainder of the hearing, as I am required to be in another committee hearing this morning.

With that, welcome, all three of you. Senator Adams, if you would proceed with your statement, and then we'll go to Senator Gorton, and Congressman Dicks.

STATEMENT OF HON. BROCK ADAMS, U.S. SENATOR FROM WASHINGTON

Senator ADAMS. Thank you very much, Mr. Chairman. I'm very pleased this morning to join Senator Slade Gorton and Representative Norm Dicks in support of S. 402, before this committee.

We regret, Mr. Chairman, just as I know you do, the absence of Senator Dan Inouye, the Chairman of the full committee, who has been an enormous supporter of this project. We are very grateful to him and we wish him well, and hope that his health will mend quickly. We miss him, and we're sorry that he couldn't be here today. We're grateful to you for taking chairmanship this morning.

Mr. Chairman, this legislation would authorize a Federal role as outlined in an agreement last summer between the Puyallup Tribe, the local governments in Pierce County, the State of Washington, the United States of America, and private property owners. The agreement is designed to settle all outstanding land claims of the tribe.

The total settlement amounts to $161.844 million. The Federal share is $77.25 million, which means that more than half the settlement will be paid by State and local governments, and by local landowners.

This agreement has been accepted by the Puyallup Tribe, local governments in Pierce County, and private property owners. It will become effective once it has been implemented at the State and Federal level. Later this morning the committee will hear from State legislators concerning the status of State legislation to implement that agreement.

Mr. Chairman, I visited the State legislature last week to follow up on the excellent journey by Senator Gorton and by Representative Dicks, and Senator Inouye, who made a direct presentation to the legislature. We have all been there. We have been assured that they will give immediate consideration. The legislature is in session, and are supportive. And they are, of course, watching our actions and our statements today. And I want to compliment Senator Gorton and Representative Dicks for the excellent presentation. The legislators felt they had been fully informed regarding the entire agreement.

Mr. Chairman, the committee, today, will hear from groups that put together the agreement. I, personally, have walked the lands. I have met the people. I have known of the Puyallup Tribe and its

problems since I was United States Attorney for John Kennedy, as far back as 1961. This has been a long and tragic history, as has occurred in many places in the United States. But this is a landmark agreement that is being proposed to the committee. The Puyallup Tribe, the private landowners, the local governments, the State of Washington, and the local communities have all played a role in trying to make this agreement a reality.

Their individual futures were at stake during the negotiations over this settlement. Their common interest in the future of the State kept them at the table for countless hours of negotiation. Through their collective leadership we have today an agreement that promises a bright future for the Tacoma/Pierce County region. The Puyallup Tribe and the entire Northwest can benefit, as well as the Nation, if this agreement is approved by all the parties.

The settlement is significant to the State of Washington, which we represent, for several reasons. During most of our State's first 100 years, and we are celebrating a centennial this year, our State tried to litigate all the Indian claims. this approach led to lengthy, expensive, and frequently bitter court battles that the committee will hear about this morning in this case. But it has been matched in many others. I remember litigation where we were trying to persuade the Solicitor General to join the side of the Indians back in the early 1960s.

But the last several years have seen a new emphasis on resolution through cooperation and negotiation. This settlement is proof that our citizens have found a new way of doing business on Indian issues in the State of Washington.

Second, this settlement is unique in that the land in dispute is not typical reservation land, located in a remote, rural area. Instead it is right in the heart of the second largest city in Washington State. Prime commercial real estate, multiple municipalities and landowners, a maze of jurisdictional issues, and the economic future of a urban area are involved. This created enormous complexity. Given these challenges, this settlement is indeed of historic proportions.

Finally, this settlement is vital to the economic future of the State of Washington. The current state of affairs hurts both Indians and non-Indians. The Puyallup Tribe has been deprived for many years of much of their land base, and the chance to develop long-range opportunities for the economic benefit of the tribe. This is a long-standing injustice and should be made right.

At the same time, Mr. Chairman, uncertainty over these lands has created hardships for non-Indians. Private landowners have clouded titles. Corporations and municipalities have been uncertain about the impact of these claims on their future.

The Port of Tacoma has been prevented from developing critical long-term plans that will allow it to compete for vital Pacific Rim trade.

This is why prompt implementation of the settlement is so important. Without implementation, Mr. Chairman, these claims will drag on for years in the courts. And regardless of who ultimately wins or loses the paper battle, both side will pay enormous costs

and they will be unrecoverable. Time will be lost in planning our State's future that can never be recovered.

The Federal Government's share of this agreement will contribute to the economic stability and growth of the entire region. There are several reasons it's important. And I will not go into detail, Mr. Chairman, because other witnesses that will follow in the next panel will do so.

But I can state that I believe the committee will reach a conclusion, as I have after listening to these witnesses, that the Federal Government, through its trust responsibility, has an obligation to facilitate and implement the settlement of these land claims. There have been inconsistent Federal actions in creating the original Reservation, and they directly contributed to the development of this conflict. The Federal Government should recognize its historic role and do its part to solve the problem.

Finally, this settlement, as will be stated by other witnesses this morning, can serve as a model for resolving similar conflicts in other parts of our country.

The settlement, as I've said before, is an extremely complex challenge. Senator Gorton and Representative Dicks are both very familiar with this conflict and have had personal involvement in it. So they are testifying today as experts on this matter, as well as representatives from the State. And I compliment both of them for their presence and for their perseverance. I hope that their perseverance and leadership, and whatever help I can give, will lead to a successful conclusion on behalf of the citizens of the State of Washington, both Indian and non-Indian, and to the betterment of the Nation as a whole.

I thank you, Mr. Chairman, and it's a pleasure to be here with Senator Gorton, and Representative Dicks.

[Prepared statement of Senator Adams appears in appendix.]

Senator CONRAD. Thank you, Senator Adams.

Next, we will hear from Senator Gorton. Welcome.

STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM WASHINGTON

Senator GORTON. Thank you, Mr. Chairman.

Obviously, I'm pleased to be here today to lend my wholehearted support to S. 402, the Puyallup Tribe of Indians Settlement Act of 1989.

But before I begin my formal testimony, I want to take a moment to express my deep appreciation to the chairman of this committee, Senator Inouye. Senator Inouye has earned the respect of his colleagues on both sides of the aisle by reason of his integrity, his knowledge of the issues, his evenhandedness and his plain hard work. The people of the State of Washington are fortunate, indeed, that Senator Inouye chairs this committee. It's difficult to imagine someone else who would have committed so much time and energy to resolving a dispute that was not within his own State's boundaries. I am convinced that without Senator Inouye's personal involvement, that without his repeated trips to the Washington State, and his reputation as a man whom all of us can trust, we would not have reached the point we have reached here today.

I also want to thank Senator Adams for his kind words and for his particularly hard work in connection with the drafting and presentation of this bill.

But, most of all, I want to thank the Congressman in whose District this land dispute lies, Norm Dicks. Norm has been a tireless advocate of a negotiated settlement of this conflict. He spent weekend after weekend shuttling between Washington, D.C. and Washington State. He is perhaps the greatest single customer of the red-eye from Seattle to Washington, DC. [Laughter.]

Norm worked diligently with all of the negotiators asserting their positions and hammering out this final compromise. Norm, you deserve the thanks of all of us for a job well done.

The word, historic, is too often misused, but it appropriately describes this Puyallup settlement. In my opinion, what is perhaps most significant about this settlement, is that all parties to the disputed lands worked together to find a solution that will benefit everyone. The task was far from easy. Generations of mistrust and lack of cooperation had to be overcome. People who previously had not spoken to one another, except in the courts, sat down week after week for 4 years to resolve disputes that originated more than 100 years ago.

As many in this room know, as a former Attorney General of Washington State, I have had some experience with litigation over Indian issues. I had a job to do then, but I have another job to do now—a more pleasant job and one that makes me feel good. This legislation, which implements the Federal share of a negotiated settlement between the Puyallup Tribe and the non-Indian residents of the State of Washington, brings us into a new and more promising era. Years and years of uncertainty, and the great expense to all parties that litigation involves, will be avoided by the successful implementation of the Puyallup settlement.

For my colleagues who are not familiar with this legislation, let me first briefly describe what has brought the various parties to the negotiating table and why we are here before the Congress today. The Puyallup Tribe entered into the Treaty of Medicine Creek with the United States in 1854. Through a series of actions that will be described in more detail by others, the tribe's land base resulting from that treaty was severely eroded. The tribe's traditional means of self-sufficiency was greatly reduced. The land to which the tribe could assert some claim, the title to which is cleared by this settlement, involves prime, developed space. These lands include portions of Puyallup, Fife, Pierce County, and Tacoma the second largest urban area in the State of Washington. They encompass the Port of Tacoma, the sixth largest container port in North America. It involves industrial areas surrounding the port which are owned by private parties who cannot obtain business loans for expansion because of the potential claims. Ordinary citizens in surrounding smaller towns are also affected, as they do not have clear title to their homes. What makes this settlement so unique, and frankly so costly to resolve, is the location of the disputed lands.

The overall settlement package will be funded by the Federal Government, the State of Washington, the Port of Tacoma, the City of Tacoma, private businesses, Pierce County, the City of Puyallup,

and the City of Fife. The Federal Government is a responsible party both because of its historic role and because of its trust responsibility to the Puyallup Tribe. Nonetheless, the Federal Government will contribute less than half of the overall total.

The Federal share of the settlement package is $77.25 million. These monies will be used by the Tribal members to better their lives and to build a base to provide for future generations. Every effort was made, not only to address today's problems, but to support economic development opportunities in the future. Funds are provided for land acquisition, infrastructure improvements, job training, small business assistance, housing, health care and social services.

Perhaps most significantly, this agreement puts behind us a history of confrontation, and puts before us one of cooperation. You will hear the word partnership mentioned many times from other witnesses. It is a good description of a new relationship among the parties to this agreement. Partnership brings together people who share common goals and interests, who will work together for a mutual objective. I hope that the committee will support this legislation enthusiastically and help us see the realization of that goal.

Thank you, Mr. Chairman.

[Prepared statement of Senator Gorton appears in appendix.]

Senator CONRAD. Thank you, Senator Gorton.

And now we will hear—

Senator GORTON. Excuse me.

Senator CONRAD. Yes.

Senator GORTON. I have two documents here which I'd like to include in the record at this point, a statement on behalf of then Vice President Bush, and a response to that from then Senator Evans, which illustrates the commitment of this new Administration to this settlement.

Senator CONRAD. Without objection, they will be entered into the record.

[Material to be supplied follows:]

Senator CONRAD. Now we will hear from the man who apparently is the hero of the moment. [Laughter.]

Just so that you won't get carried away, Congressman Dorgan tells me that you're not that much of a hero on the basketball court over in the House. [Laughter.]

Mr. DICKS. But I want you to know that Congressman Dorgan and I have won many doubles tournaments together, and that he's a very effective partner.

Senator CONRAD. He says he carries most of the load.

Mr. DICKS. No; I think the way he puts it, he's a little better in singles, but I'm a little better in doubles. And he's always accurate. [Laughter.]

Senator CONRAD. Welcome, Congressman Dicks.

STATEMENT OF HON. NORM DICKS, U.S. REPRESENTATIVE FROM WASHINGTON

Mr. DICKS. Thank you. I am deeply pleased to be here today, and I, too, am saddened by the fact that Senator Inouye, who has been really at the forefront of this effort, and has, you know, come out

to my district, I believe, eight times in the last year, has given me enormous help in this effort, as chairman of this committee, is ill. And I also want to compliment your effective staff. Dr. Zell has been enormously helpful to me and to my staff, and also has worked very diligently to get us to this very important point.

And my colleagues have been far too generous. Senator Adams, Senator Gorton obviously have played a major role in this effort. And we're here now and the heavy lifting starts. And we're going to need them in very significant ways here in the Senate in dealing with the Administration in order to take this legislation, which now has been presented and move it through the legislative process. And I've always believed that the Washington State Congressional delegation, both in the House and the Senate, have always been known by their effectiveness, and their ability to get things done. And this will be a challenge for us, but I think it's a worthy challenge, and one that we gladly accept.

I'm glad to be here to testify on behalf of S. 402, the companion bill to H.R. 932, which I introduced in the House of Representatives, along with every member of our House delegation. This legislation is, I think, vitally important. I want to lend my full support to the settlement which the bill authorizes. And I believe our presence here today represents an historic step and a new beginning, both for the Puyallup Tribe and the non-Indian community.

Yesterday, I had an outstanding hearing on the House side, and I think everyone felt, at that hearing, that after 100 years of statehood in which we've had some bitterness, and an era of antagonism, that maybe this next 100 years for the State of Washington could be signaled by better relations between the tribes and the non-Indian community. And I feel that same spirit here today.

Please allow me to give you just a brief history of recent events leading up to the negotiations between the Puyallup Tribe and the Pierce County community. In addition to other land and jurisdictional claims affecting the Pierce County area, the Puyallup Tribe asserted and recently won ownership of 12.5 acres of former riverbed in the *Puyallup Tribe* v. *Port of Tacoma* case in July 1981.

In 1983, the Ninth Circuit upheld the lower court's decision on Puyallup title to the 12 acres of bottomland. And in June 1984, the U.S. Supreme Court denied certiorari on the Port of Tacoma's appeal of the Ninth Circuit Court decision.

These three court decisions prompted the Puyallup Tribe to write a letter in 1984 to myself and Mayor Doug Sutherland, proposing a negotiated settlement to resolve their historic differences rather than entering into a long and protracted legal battle over all of the tribe's land and jurisdictional claims. Thus the negotiations between the two parties began.

And we had some difficulties for awhile. We had one settlement that we all agreed to and the Tribal members voted it down, but with Senator Inouye's leadership, we rekindled those efforts and began negotiations again in February of 1988, when the tribe requested a three-month stay of court proceedings to permit one final attempt at negotiating a resolution to the claims. In August of 1988 the Tribal membership voted on the current agreement and approved it by a two-to-one margin.

The process has been long, and at times extraordinarily difficult. I am here this morning to ask that the Congress, through the passage of these two bills, and through the appropriations process, provide the support necessary to implement the provisions of the Puyallup Indian Settlement. The settlement package that was agreed to by the Puyallup Tribe and non-Indian parties is a comprehensive and balanced package. It is one that is fair to all sides, points to a positive future for the tribe, and for the citizens of Pierce County, and for everyone who has been involved in this important issue.

I would prefer, if I could at this point, to insert and for the committee to put it in the committee's record, a document which goes into some considerable detail about the settlement. It tells where the money comes from, where it's going to go. In my judgment this settlement lays out a distribution of resources which include a trust fund that will be permanent. There will be a one-time payment for the members. The tribal members will get a considerable amount of property. We resolve a whole series of jurisdictional issues, which are made complicated and difficult because we're in a highly urban area. And so, I think this settlement, in my judgment is very positive for the community and I want to clearly point out to the committee that this settlement will resolve at least five categories of claims, lands which formed the bed of the Puyallup River before the U.S. Corps of Engineers rechanneled the river, now occupied by homes, farms, industrial development, and roads; tidelands which were filled as a result of Federal navigation projects, now a central part of the Port of Tacoma's terminals; a 2 square mile initial reservation, which is the heart of Tacoma's central business district; uplands adjacent to the tidelands in the Port, which are alleged to have been inaccurately surveyed; public roads and utility rights-of-way which lie within the Indian addition, a section of land within a residential and commercial area near Downtown Tacoma.

These claims affect hundred of millions, if not at least a billion dollars' worth of properties and improvements in the second largest metropolitan port area in the State of Washington, an area with population close to a half million. Homeowners, farmers, businesses and local governments face clouds on title to their properties, inhibiting or more likely totally barring sale of property, use of land as collateral for loans, and issuance of bonds for public improvements. Given the tribe's Sovereign immunity, this situation could continue into the next century without a settlement.

In addition to the tribe's claims to portions of the reservation, Congress, the executive branch, and the Federal courts have all acted in recent years to expand Tribal jurisdiction over entire reservations, including non-Indian properties. In this instance, those lands amount to more than 95 percent of the 18,000 acre reservation.

These extensions of authority do not accommodate our unique situation, and will, inevitably lead to a whole new series of issues to be resolved by the U.S. Supreme Court, or to be presented to Congress for resolution.

Absent this settlement, the members of the Puyallup Tribe will remain in the same position that they have held for the past two

decades, with the only certain prospect being that of endless litigation. These people have experienced court battles, violence and community mistrust. While geographically a part of the larger community, they have lived apart. Federal laws and policies have created or fueled these conflicts. Now, we have a chance to bring justice and common sense to bear on the situation, with greatly improved opportunities for the whole community, Indian and non-Indian alike.

As will be further emphasized through the testimonies of Attorneys Sachse and Waldo, the U.S. Government has responsibility for the historical circumstances that led to the disputes and disagreements that have preceded this settlement. Therefore, I believe it is fully justified for the Congress to make available the $77.2 million that comprises the Federal share of the $161 million agreement package. While I do not deny that $77.2 million is a significant amount of money to ask from the Federal Treasury, I believe that it is possible to make an exceedingly strong case that these funds are a worthy investment that will create substantial economic returns that will be felt for decades in the affected communities and will send revenues back into the Federal Treasury. What is also significant about the requested Federal share of this settlement, is that it is below the 50/50 Federal/local match that is an informal standard set for Indian settlements. The Puyallup settlement calls for a 48-percent Federal match.

This settlement represents a remarkable achievement for the Federal Government, State of Washington, the Pierce County community and the Puyallup Tribe. It will resolve once and for all the long-standing land claims and jurisdictional disputes which have hindered development and clouded residential and commercial property in the city of Tacoma, the Port of Tacoma, Fife and South Puget Sound. In addition, these prolonged disputes have kept the Puyallup Tribe from realizing its full economic and cultural potential. Overall, the settlement is worth $161.844 million. And as I mentioned, previously, the Federal share is $77.2 million.

And so, I would like to put the rest of my statement in the record, and to give you this very good booklet that describes the settlement in detail, and say how much I appreciate your being here today to open up this hearing. And I look forward, again, to hearing from the witnesses from our State who are prepared to testify on the importance of this agreement. Thank you.

Senator CONRAD. Without objection, Congressman Dicks, the rest of your statement will appear in the record, as well as the printed material that you've offered.

[Prepared statement of Congressman Dicks, and the Puyallup Tribal Settlement booklet appear in appendix.]

Senator CONRAD. I would like to ask the witnesses if the administration, the Bush administration, has formulated a position on this bill, and if so, whether or not they favor or oppose this legislation?

Senator GORTON. Mr. Chairman, as I said during the course of my comments, we have a generally favorable attitude expressed towards this settlement by President Bush during the course of his campaign while he was Vice President. It does not deal with the details of the settlement as it exists before you here.

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We have submitted the settlement to the Office of Management and Budget, and I will be discussing it with them during the course of the next couple of weeks. At this point the administration has not formulated a specific response to this bill.

Senator CONRAD. All right. Thank you, Senator Gorton.

I notice in reviewing the legislation that there are no appropriations authorized in the legislation. Is there a reason for that?

Mr. DICKS. Well, I think that we will have to amend it. We want that to be done here. And that would be an authorization—not an authorization, an appropriation. We intend to deal with the appropriation separately, probably in the context of the Interior Appropriations Bill. But we want to make certain that when this bill comes out of committee, that it is, in fact, an authorization.

Senator CONRAD. And the amount of that would be, from the Federal Government's standpoint, the $77.2 million that you referred to?

Mr. DICKS. That's correct.

Senator ADAMS. That's correct.

Senator CONRAD. With that, I have no further questions of the distinguished witness panel. If, at this point, I could ask the three of you to join me on the dias, and Senator Adams and Senator Gorton will jointly chair the remainder of the hearing. And Congressman Dicks, because of your key role in this legislation, we'd very much like to have you join us on the dias and participate in the questioning of witnesses as we proceed through the rest of the hearing.

Mr. DICKS. Thank you, Mr. Chairman. I appreciate that.

Senator CONRAD. I have to go to another hearing, and I will leave to Senator Adams the calling of the next panel. And then, as I understand it, he and Senator Gorton will share the chairing of the remainder of the hearing.

Senator ADAMS. The committee will come to order. The next panel will be Mr. Harry Sachse, counsel to the Puyallup Tribe, and Mr. James Waldo, counsel and chief negotiator representing the non-tribal parties to the settlement. If you would both please come to the witness table, we would appreciate it.

Have you gentlemen agreed upon an order of testimony?

Mr. SACHSE. Yes, Senator Adams; I will begin.

Senator ADAMS. All right.

We will hear first from Mr. Harry Sachse, counsel to the Puyallup Tribe. Welcome, gentleman, the committee is prepared to hear your testimony. You may proceed either by placing in the record your full statement and summarizing, or you may read it, at your preference. We are prepared to receive it.

Mr. SACHSE. I'll place this statement in the record, which I've already given you and then just talk about some of the issues.

Senator ADAMS. Without objection any statement will appear in full in the record at this point, and Mr. Sachse, you're recognized.

STATEMENT OF HARRY SACHSE, COUNSEL TO THE PUYALLUP TRIBE, WASHINGTON, DC

Mr. SACHSE. Senator Adams, Senator Gorton, I'm pleased to have the chance to be here, pleased to be before you. And if someone

had asked me a year or two ago whether we'd ever get this settlement to the point that the tribe and all the local governments in the State of Washington had agreed to it, I would have had my doubts, but here we are.

The history of the Puyallup Tribe really informs what has caused the controversies between the tribe and the local community, and why we're here today. The Puyallup Tribe is one of the salmon fishing tribes of the Puget Sound area. They were a peaceful tribe who always lived on the Puyallup River, fished in Commencement Bay and the Puyallup River and surrounding areas. In 1954, when Isaac Stevens was the Territorial Governor, the United States entered into the Treaty of Medicine Creek with the Puyallup Tribe, in which it guaranteed their fishing rights and other rights and guaranteed them a reservation. But when the Government got around to actually setting up the reservation for them, instead of giving them a reservation that included the tidelands, where they gathered clams and so forth and kept their canoes and the river where they fished, they gave them a reservation shown on the land and jurisdiction claims map on display as now the center of downtown Tacoma. The reservation was no good for the Puyallup Tribe. It didn't have access to the bay. It's a steep cliff there. And the tribe was so disappointed that they hadn't received from the Government, what they had been promised, that they actually went to war, though the odds in the war were impossible. And there was battle for a year or more.

Then there was a conference that was held, in which Mr. Stevens met with the tribal leaders again, basically apologized to them, said that he wanted them to have the kind of reservation that would make them happy and that they should choose the area that they wanted. And they chose their traditional area that was the mouth of the Puyallup River, the flats—the highlands surrounding the mouth, and the tidal flats that went across.

Senator ADAMS. Mr. Sachse, since you are referring to a map, you might indicate the colors and so on for those who are familiar with the area.

Mr. SACHSE. The areas that I'm referring to on this map that's before the committee are all in yellow or orange. They're also outlined with the date on page 15 of the pamphlet entitled Puyallup Tribal Settlement 1989, Federal Participation, which you have.

Senator ADAMS. And the area that you referred to is the area—

Mr. SACHSE. This is the one.

[Pointing to map, area B in the pamphlet.]

Senator ADAMS. And the area that they selected?

Mr. SACHSE. The area selected—I'll get into this in more detail—is the current reservation boundaries plus the tidelands and further headlands.

[Pointing to map, areas D and A and blackened tidelands in the pamphlet]

Senator ADAMS. Thank you.

Mr. SACHSE. What happened then is, to describe the reservation a survey was made, and an Executive order was passed. The Executive order was dated January 20, 1857. The subsequent Federal officials that looked at the survey said the surveyor must have been drunk, or that he just ran out of energy or decided he wasn't being

paid enough money. Because what the surveyor did is to survey the outer lines of the reservation area, but when he got to the tidelands, he did stations at both ends and then just ran a straight line across. So, the effect of it was that it included some tidelands in the reservation, and excluded most of the tidelands.

[Pointing to map.]

Senator ADAMS. Is it fair to say that most of those piers obviously were not there at that time?

Mr. SACHSE. No; they were not there.

Senator ADAMS. So that the tidelands were somewhere short of those physical structures?

Mr. SACHSE. The tideland area was in this area, and then the piers that extended are what had been the tideland area. We have got maps of where it was at different dates and so on and so forth.

What happened as a result of this, is the tribe, of course, knew nothing in detail about the Executive order, or the survey. No one spoke English, no one understood these concepts at that time. What they did know is what had been promised them orally at the Fox Island Conference and there's a very alive oral history of that to this day, where people can tell you what was said, and you go back to the minutes of the Fox Island Conference, and it's accurate as to what was said at the Fox Island Conference.

What happened then is the situation just stayed that way as a potential problem. But no one was interfering with the Indian use of the land until after the Civil War. And after the Civil War when settlers began to come in, they began to exclude the Indians from the tideland area, interfere with their fishing, interfere with their docking of their boats there. There was an excellent Indian agent, Federal agent, who was a representative of the Bureau of Indian Affairs, named Milroy, who saw this, objected to it, said the tidelands belonged to the Indians, wrote a number of letters to the Secretary of the Interior and to Congress about it. All of which resulted in a second Executive order, in 1873.

The second Executive order didn't do everything Milroy asked for. It gave less than Milroy had asked for, and certainly didn't give the tribe everything that it should have had under the treaty. The second Executive order added to the reservation all of section 34 that was not currently in the reservation. Most of section 34 is in the tidelands. And if you want to understand the importance of this today, section 34 is the heart of the Port of Tacoma. It's where the most important wharfs are, warehouses, Sealand Terminal, and so forth.

[Pointing to map, area E in the pamphlet]

Now, if the 1873 Executive order had been honored by the United States, it's likely that none of us would be here, that the dispute would have been resolved back then. Though the tribe would not have had everything that had been promised, it would have at least had an area of tidelands.

But the Puyallup Tribe had the good fortune and the bad fortune to be located exactly where the Northern Pacific Railroad and the Burlington Northern Railroad thought would be the best terminal for their cross-country rail lines, and the reservation was then in the way. Railroad rights-of-way had to be granted across the reservation. The city of Tacoma grew because of the railroads ending

there. The Port of Tacoma was created because of the railroads being there. The urban structure that you've heard the Senators and Congressman talk about, had its beginning there.

The result to the tribe was that the non-Indians wanted their land. And Congress helped them take it, in a most shameful way. In 1887 Congress passed an Allotment Act for the Puyallup Reservation. The Allotment Act said that every individual Indian would have a certain amount of land, and that then the rest of the land would be sold to anyone who wanted to buy it. That's the way most allotment acts were. This one was rather particularly cruel, because it had a 10-year trust period for the individual. And it meant that the individual Indian would have his own land, but 10 years after that date, his land would be held in fee just as anyone else's land would be held.

Now, these Indians, at that time, didn't speak English, had no concept of taxes, except that Indians were not to be taxed, had no concept of mortgages, or judgments, of cases in court. And the result was, that the Allotment Act sold most of the Indian land, and then the land that was supposedly reserved for the Indians was also lost by foreclosure, by tax sale, by judgment, and the Puyallup Tribe became an underclass in a developing community that was developing on the land promised it by treaty with the United States.

The result, then, was that the tribe had practically no land that was recognized as its own. The situation began to turn around in 1934 with the passage of the Indian Reorganization Act, which was designed specifically to help tribes, such as the Puyallup Tribe. The Northwest Coast Tribes were mentioned by name in the history of the act as tribes that had lost most of their land, needed to reacquire land, and reorganize their governments.

The Puyallup Tribe was one of the first tribes to reorganize under the Indian Reorganization Act. Then in the 1960s, began a whole series of cases to reestablish Puyallup rights. And when you understand what had happened to the tribe, you can understand how these cases were motivated, because the tribe had lost so much of its land that whatever it had a claim to, such as the riverbed, or the tidelands became that much more important to claim and get back, because it was all they were going to have.

I should mention this too. I've left out one piece of this story. In the 1890s there was a lawsuit brought to quiet title to the tidelands. It was called *United States.* v. *Ashton.* In it the District Judge, without a trial and on a motion to appoint a master, without any evidence having been put in, ruled that the tribe had no ownership of tidelands. And that case was then appealed to the Supreme Court, which denied the appeal. No Federal question, they said.

We thought the case was so out of line with what the courts were doing at that period of time, or what they would do now, because the tribe is a fishing tribe and used the tidelands, and because of the history of section 34, we couldn't understand how that case came about, how that result came about. We had historians research the situation, and found that the judge, Cornelius Hanford, was impeached by the House of Representatives 3 years later, and that there was a long impeachment hearing. Hanford, WA is

named after him. The impeachment hearing showed that Mr. Ashton, the defendant in that case, who had bought tidelands from the State—the State had started patenting tidelands to private individuals—was a business partner of the judge. In fact, they were co-defendants in a case where someone was suing their business for fraud at the time that Judge Hanford was trying the *Ashton* case. We also found that Judge Hanford resigned during the impeachment hearing, rather than have it be completed, and that after he resigned, Mr. Ashton set up a trust fund for Judge Hanford's family, and carried out the rest of the way—he was also a pallbearer at Judge Hanford's funeral. And Ashton, of course, established—if that case is to be given effect—ownership of large pieces of tideland which he then sold to other people.

The tribe's position has been that they are not bound by res judicata in a case that was a fraudulent and collusive case.

To get back to more recent times—and I'll move this along, because I think I'm taking longer than I intended here—the tribe began litigating its fishing rights and went to the Supreme Court three times on that one. I must say, I have some of the same pleasure that I think Senator Gorton has in seeing this settled, because I was in the Solicitor General's Office, and I argued one of those three cases, as a government lawyer, Puyallup Two. I also argued several other cases where the United States helped the tribe reassert its rights. As a government lawyer, another case called *U.S.* v. *Washington* upholding the continued existence of the tribe and the continued existence of the reservation against attacks by the State that they'd both been abolished.

After the fishing rights cases, the tribe had a whole series of victorious cases, which I think brought the local community to the point that they said, we should take the tribe seriously as a government and as having legal rights and see if we can settle these issues. One was *City of Tacoma* v. *Andrus*, it was decided by Judge Gesell, who held the Secretary of the Interior not only had the right to take property in trust for the Puyallup Tribe, but that he was acting in the very core of his authority in doing so. The case also held that the city couldn't regulate activities on trust property.

Then there were two cases that enjoined construction in the Port of Tacoma where the port was undertaking construction without providing adequate mitigation and enhancement procedures to protect the fishery. The Port of Tacoma is one of the places where the tribe's treaty fishery takes place and is an important milling ground for the fish that come up the Puyallup River. In another case, the tribe acquired ownership of Cushman Hospital, which had been tribal land, had been donated by the tribe to the United States, and then when the United States stopped running a hospital, the United States donated it to the State of Washington, instead of back to the tribe.

The most recent, and perhaps most important case *Puyallup Tribe* v. *Port of Tacoma* in which the tribe established that it still owned the riverbed, and that it owned the dried portions of the riverbed that snaked all through the reservation. If the tribe had then started suing every private landowner who was on one of those dried portions of riverbed, we would have displaced 1,000 people,

perhaps, and would have had a very large number of suits, not to mention, suits against the utilities and anyone who had a right-of-way across those lands because they'd been granted by people who didn't own the land.

Now, at this point I want to switch to the rather obvious question, why should the United States participate in the solution of these problems? Well, the first answer is that the United States really caused the problems by not providing the Puyallup Tribe with a suitable reservation when it was first promised to them, by then providing a suitable reservation and taking it away from them when it never should have done so, and when it left them with nothing. The United States thus caused the problem that State and local counties have had. The United States also has a responsibility to the Puyallup Tribe itself to do some justice to them after many, many years of injustice.

Another reason that the United States should participate in this, is that there has been a major effort by the tribe and the non-Indians to settle their issues, following policies that the United States has encouraged, of settlement rather than litigation of these issues. And after 4 years of enormous work, with representatives of the United States sitting in on the sessions, we've come to this solution, and the United States should support it.

You might ask, well, the lawsuits weren't against the United States, why should the United States pay money. The quickest answer is that the lawsuits in the Maine settlement weren't against the United States, they were against the State of Maine and against the private landowners there. Indeed in the Maine settlement they were not actions of the United States that caused the problems to the degree there are here. But in the Maine settlement the United States paid 100 percent of the settlement to resolve the issues for the people in the State of Maine. And here, the people in the State of Washington and the tribe are not asking the United States to pay that percentage, plus the United States 'involvement in the causes of the problem are that much greater.

I want to mention one other thing. Most Indian tribes around the country have brought cases in the Court of Claims under the Indian Claims Commission Act, and you've read about the Sioux Claims, where the United States paid over $100 million. The Puyallup Tribe brought a case in the Court of Claims many years ago. When the current people saw that it was there, they dismissed it. They didn't want to just be paid a sum of money by the United States and have that be the end of their restitution. They wanted to get back some land and get back some economic opportunity. So they dismissed that case. So, in one way you're dealing here with a tribe that put its money where its mouth is, and said, we want to negotiate a settlement. We don't want it to go through the claims route. So the United States has not had to pay a claims judgment to the Puyallup Tribe.

This concludes my statement. I'd be happy to answer any questions, or perhaps answer them after you've heard from Mr. Waldo.

[Prepared statement of Mr. Sachse appears in appendix.]

Senator ADAMS. We'll reserve questions, Mr. Sachse, thank you very much, until the panel has testified.

Mr. Waldo, we're pleased to hear from you at this time.

Mr. WALDO. Mr. Chairman, thank you, members of the committee. I would like to submit my testimony for the record, which has previously been provided to the committee, and simply address several key points.

Senator ADAMS. Without objection, the statement will appear in full in the record at this point, and you may proceed as you have outlined.

STATEMENT OF JAMES WALDO, COUNSEL AND CHIEF NEGOTIATOR REPRESENTING NON-TRIBAL PARTIES TO THE SETTLEMENT, SEATTLE, WA

Mr. WALDO. I would like to specifically address the question of Federal role and responsibility in this situation. I have found it quite remarkable in the last few days that several people back here in the Federal Government have said, well, why should the Federal Government participate in this. And you have to begin from the point of departure that every claim and every conflict at issue here arises from a Federal treaty, a Federal Executive order, a Federal court decision, or a Federal Congressional or Executive action setting up a claim or a right. There is not one dispute between the tribe and the community, either private property owners, local governments or State government that does not arise from a Federal treaty, Executive order, law or a court case, not one.

So I start from that point with a little bit of amazement that people would say what role or responsibility does the Federal Government have in this situation, when, in fact, it is Federal rights and responsibilities that's at the heart of every one of these controversies.

In that context, let me then address the history as to how some of these claims are still open today and what role the Federal Government has played in that. And let me begin with the initial reservation—and I'm going to refer to page 15 of the booklet that Congressman Dicks referred to that has been submitted for the committee record. And you will see on page 15, two areas outlined as the initial reservations of the Puyallup Tribe, labeled A and B. As Mr. Sachse described, after these were initially laid out in 1855, the tribe went to war, and in 1857 an Executive order, Federal Executive order by the President of the United States, said an expanded reservation will be created. Well, does expanded incorporate the initial reservation, as claimed by the Puyallup Tribe, or does expanded mean the large 18,000 acre reservation which you see on the large map here, and which is the large gray area on the map on page 15. It's unclear to this day what expanded means, what the Federal Government intended. So the tribe claims one thing, the State and local communities claim another. I might point out that the areas covered in A and B often go back to original Federal patent titles. Both the tribe and the non-Indian titleholders claim title from the United States of America. So, to one or the other, the United States did not give good title as to this claim.

Let me now go to the area created by the 1857 Executive Order which fronted on Commencement Bay. Where exactly were the lines? As Mr. Sachse said, the surveyor shot a straight line. But in addition to that, we cannot find the survey. The Federal Govern-

ment has lost the initial survey of 1857. It cannot be found by the Federal Government. It cannot be found by the State. It cannot be found by the tribe. It is not—we have not been able to find it. So we have claims as to exactly where the tidelands started and stopped, and an allegation by the tribe that there was a missurvey executing the instructions of the Executive order, and therefore upland properties, not just tideland property, but upland properties that have title extending back either to Federal patents near the river, or to the State of Washington are invalid. These were Federal actions, not local actions, not tribal actions, not State actions. These were Federal actions.

Now, we come to the question of the tidelands in front of the reservation. Mr. Sachse described the controversy that occurred after the Civil War, so we have a second Executive order in 1873, Presidential Executive Federal order which says those lands seaward of the current reservation in section 34. Now, if you will note, and it is shown better here on this larger map, this area in red, the black line in red was upland at the time. The rest of section 34 was tidelands. Now, does that one sentence in the Executive order, when it says that area seaward, does that mean that small area of upland, which is what the State believe when they platted the tidelands, what our people believed when they bought the tidelands, or as the tribe contends, did it include all of section 34, including the tidelands? That issue was known in the 1800s. And in fact, in 1890 Congress created the first Puyallup Commission.

The instructions to the Puyallup Commission were to look at the issue of whether the tidelands were included within the reservation. The Commission concluded that they were not. They sent that report back to the Executive branch. The Department of Interior disagreed with the Commission's decision, and said, they were included. The Department of Justice agreed with the Commission. The President did nothing, Congress did nothing, and now we face these claims 100 years later. These were Federal actions and inactions that have directly given rise to the ambiguity and the dispute for the claims that we all face today. These were not actions by the tribe, who made clear their views at that time. And they certainly were not actions by people who are private property owners or local governments today, who weren't even aware of the existence of this controversy until the last 5 or 6 years. The State of Washington did not begin to plat and sell tidelands until after the first Puyallup Commission's report in 1890, and the response by the Executive branch. Then we have the second Puyallup Commission created by Congress in 1893. Among other things, as Mr. Sachse has testified, was to pursue the sale of alloted lands, and as it turns out, to convey—recommend conveyance of public streets and right-of-ways in the what was then called the agency tract, and is now called the Indian addition to the city of Tacoma. That area is shown here on this large map here.

[Pointing to map.]

Mr. WALDO. The tribe claims that the Commission acted without sufficient Congressional authority, and that all of the conveyances to the city of Tacoma pursued pursuant to that second Puyallup Commission's report are invalid. When you go back and you read the Congressional history and the directives, it is unclear what

their authority is. Therefore, the tribe is maintaining a claim, which obviously the city of Tacoma is resisting, so we have yet another set of claims arising out of Federal Government actions, both by Congress and by the Executive branch in the late 1800s.

So it is against this history of Federal action in both creating the situation and the nature of the claims in the first place, and then failing to address them when they were brought up close to 100 years ago, that we now find ourselves in the situation we're in today. In addition to these specific actions related to the Puyallup Reservation, we have had the general Federal policy, which for most of this last century was a policy of allotment and assimilation, allotment of lands and assimilation of tribal members into the general society. And the result of that was that the Puyallup Tribe land holdings generally disappeared, and the tribal government all but disappeared. In the 1960s, 1970s, and 1980s, the Federal Government, and by that I mean the Executive branch, the Congress, and the Federal courts, essentially reversed this policy, and established a trend of strengthening tribal governments and sustaining tribal claims for rights, and powers that had not previously been pursued by tribes.

In our area this has led to confrontations, physical violence, racial conflicts, and court litigation which has dominated every one of these sets of issues over fishing rights, development issues, land claims, and governmental authority and jurisdiction.

One example out of very recent Federal history, which I would like to bring to the committee's attention, relates to legislation recently passed by Congress codifying tribal jurisdiction over all lands within reservation, Indian and non-Indian, for purposes of implementing Federal clean water and environmental clean-up programs. The Ninth Circuit has held that these provisions operate to exclude State authority within reservations.

Now, in this area of Tacoma and Commencement Bay, we have one of the largest superfund cleanup sites in the country, which is in the middle of this large area in yellow, that once encompassed the Puyallup Indian Reservation established by the Executive Order of 1857. As Mr. Sachse said, the Ninth Circuit has upheld the fact that the tribe exists and the Reservation exists. There has been a dispute over the exact nature and extent of that reservation which, in the context of superfund and the recent Federal legislation that has been passed, that if we do not have a settlement, the issue of that jurisdiction and the application of that legislation to this 18,000 acre area will go to the U.S. Supreme Court, without question. And that will delay, if not stop cleanup efforts in Commencement Bay for however long it takes to get the case of who's in charge to the U.S. Supreme Court. That is not in the interests of the environment. It's not in the interests of the tribe. It's not in the interests of the local community or the Federal Government to have that happen. But it will happen. Because the Federal policies and statutory authorization at work here, do not fit the unusual situation which we have, which has been described by earlier witnesses.

But I would just like to emphasize two points for the committee record, that in this case 95 percent of the property in non-Indian fee-owned property, and 98 percent of the population are non-Indi-

ans. And we are talking about hundreds of thousands of people. We're going to have an unholy mess if we have to get into litigating not only the land claims issue-by-issue, but the jurisdictional elements issue-by-issue, all of which arise from not only past Federal action, but recent Federal action.

Senator ADAMS. Pardon me.

But the settlement, as I understand it, and I think this is appropriate point for you to address, deals with the jurisdictional powers of the tribe over these lands and these jurisdictional powers are granted to the State with the exception of fishing rights, is that correct?

Mr. WALDO. That's correct, Mr. Chairman. In other words, the settlement, as part of reaching the settlement, we have addressed the future governmental authority of the tribe and of the State, and of the local governments, and of how they'll work together and who will have authority in which area. So those have been addressed.

But without a settlement, we will have no such answers, except to plow our way through the court system.

Senator ADAMS. And the superfund jurisdiction will remain under the jurisdiction, you're telling us, of the tribal government?

Mr. WALDO. Well, the way that the statute is set up, Mr. Chairman, is that where you are within a reservation, the tribe will apply to EPA, to the Federal Government, for authority to run the program. And so EPA may make some judgments about their capacity to do that. But what the Ninth Circuit has said, is that the States are precluded, that this is an exclusive authority. It either goes to EPA or to a tribe, but not to a State.

So, within this entire area, we're talking about a big void of environmental cleanup and authority, and capacity to carry out this program.

Senator ADAMS. Thank you.

Mr. WALDO. In light of all of these Federal actions, extending well over 100 years, it was our position, when we first approached the Department of Interior, that not only was there Federal responsibility, but in fact, the Federal Government was primarily responsible for these problems. Our proposal was that the Federal Government pay 80 percent of any settlement costs, and that the State and local community pay 20. That if we were looking at history, and responsibility and culpability, that about one-quarter of it, at most, or one-fifth belong at the State or local level, and about four-fifths belonged at the Federal level. And we were informed, that notwithstanding history and culpability, and responsibility, that the previous administration had a policy of approximately 50/50 match, non-Federal and Federal, and if we wanted a settlement and wanted any chance of consideration, we better meet those guidelines.

So we went back and helped try and fashion a settlement that did that, not because we thought it was a fair allocation of resources, but simply because we need to get these problems solved and get them behind us. And the settlement that you have before you, in fact, has over half the settlement being provided from non-Federal sources, not because we believe that's a fair reflection of the history of who created and maintained, and that's been respon-

sible for leaving these problems open, but simply as a practical reflection of the Federal budgetary situation, and the guidelines of the previous administration.

In addition to the history, if I might, I would like to briefly address, I guess another set of reasons in terms of Federal participation that are of a cheerier note, and a happier note, and those are current Federal policies that are being implemented by this settlement in a way that I think can provide some examples in leadership for the entire country.

And let me begin with a number of them that first relate to Indian policy. And those include the goal for the tribes to become effective governmental units in our system of government in this country, and how do we fit that in to an existing Federal, State, and local framework? How is that going to be done so that it is more than a set of paper rights or national proclamations? And here is a case where this has been worked out in painful detail between the tribe and the local governments and the State, in a situation that is as difficult and demanding as any you are going to find in the country.

Second, the Congress and the Executive branch have had a policy in recent times of trying to help the tribes essentially become more economically self-sufficient, both as tribal institutions and as to their members. This settlement provides one of the more complete and thoughtful approaches to those goals from any that I have witnessed anywhere in the country. And in a setting, given the potential economic development possibilities of the area, where the Puyallup Tribe, in fact, could provide an example in leadership for the entire country.

It is also a Federal policy and goal these days to expand our competitive ability internationally, and particularly in the export market. And others will address this in more detail, but the opportunities for the Puyallup Tribe, in the Port of Tacoma in this setting, with a settlement and with the Blair Waterway open, are almost unlimited in comparison to other areas of the West Coast, to help the United States achieve those goals.

Fourth, several years ago the United States entered into a treaty with Canada, the United States/Canada Salmon Treaty. One of the obligations undertaken by Congress and the Executive branch under that treaty, was to provide for enhancement of salmon in the States of Washington, Oregon, and Alaska in order to implement the promise of that treaty. The fishing portion of this settlement is, in fact, designed with the United States/Canada Treaty in mind, and will provide substantial increases in Chinook and Coho in particular that will benefit all U.S. fishermen who fish in and around the waters of the State of Washington, and will act to help implement that policy that the Congress and the Executive branch adopted as part of implementing the United States/Canada Treaty.

And finally, it has been a policy in recent years of the Congress and of the Executive branch, to try and obtain negotiated resolutions of difficult Indian claims problems throughout the country. And, in general, the effective policy has been to say to those who are involved, you will have to work it out amongst yourselves, you cannot expect the Federal Government to be the bag holder, we want to know what is going on, and as a rough rule of thumb, you

should come up with somewhere in the neighborhood of approximately 50 percent non-Federal funding, because that is our way of knowing that you're serious about resolving these issues, and you're willing to pay your share. That was what we understood, and that is what we have accomplished in these difficult circumstances.

So with that, I would like to say in conclusion, on a personal note, every so often you get a chance to do something really worthwhile when it comes to making a difference in people's lives. And without question, this settlement in this community provides an opportunity for literally thousands, if not ultimately hundreds of thousands of people to have a better chance at life, with more hope, with more likelihood that they will have a better physical environment, a social environment between races, and an economic environment, a chance for a decent job and an education. And that is particularly true of the tribal members, but it is also true of all the other people who live in and around this community. And so I would urge this committee to do everything possible to pass this bill out quickly, and help us make this opportunity a reality.

Thank you very much.

Senator ADAMS. Thank you, Mr. Waldo, for excellent testimony.

[Prepared statement of Mr. Waldo appears in appendix.]

Senator Gorton.

Senator GORTON. Jim, you spent quite a bit of your testimony emphasizing the Federal responsibility for the situation which we have before us. Maybe I missed it, but I didn't hear any comment on whether any of the claims the tribal or Indian claims which are the subject of this settlement, if not resolved by legislation, would involve or lie against the Federal Government itself. Are there any such claims?

Mr. WALDO. Certainly in the area of the initial reservation, where you have the Federal patented land, if the tribe pursued that claim, and were to be successful, the chain of title goes directly back to the Federal Government. In the case of the tideland claims, if the tribe were to pursue that, and if they were to be successful, the current defendants, in other words, current titleholders, would immediately turn around and sue everybody back through the chain of title to the State of Washington, and the State at that point, I'm sure, particularly based on the findings of the first Puyallup Commission in 1890—in other words, not only do you have the general doctrine of equal footing, that tidelands will go to a new State upon statehood, here you had a particular commission created by the Congress of the United States to look at this issue, and the State did not survey or sell these tidelands until after that commission report, and so the State, in order to protect itself in the event of such a lawsuit through the entire chain, will obviously bring the United States in and say, our claim was only as good as yours, and you in fact set up a commission which told us it was okay to do this.

As to the former riverbed, the Corps of Engineers was involved in the flood control, straightening and diking of a number of these properties, and again, either through the State of Washington, indirectly, or through the Corps of Engineers, directly, I think the

United States could expect to be brought into that series of lawsuits if they were to occur.

Senator GORTON. A follow-up question on that for you, or for either of you for that matter, what role has the Department of Interior played in these negotiations, right back to 1984 and up to date?

Mr. WALDO. When this effort was initially started, between the tribe and the local community, Congressman Dicks arranged for a meeting with, then, Secretary Hodel of the Department of Interior and some of his people, to both apprise them that this was starting and to inquire how the Federal Government should participate in this effort. The Secretary provided funding to assist the tribe in the retention of experts for this process, of a number of different types, and designated staff and legal representatives to follow these negotiations. And in fact, several assistant secretaries over that period of time, for Indian Affairs, traveled out to Tacoma, participated in meetings with the tribe and ourselves, and joint meetings. And we, I think on three or four different occasions briefed officials in the Department of Interior, up to and including Secretary Hodel on the progress we were making, or the problems we were having. And, in fact, the reference to the 50/50 match, Federal/non-Federal, I referred to earlier, came from a meeting with Secretary Hodel where we put forward the proposition of an 80/20 match, and were informed in a courteous and direct, and constructive way, but nonetheless it was going to be no more than 50/50, or there was no point in talking to the administration.

They made it plain throughout this process that they have some difficulty in these negotiations because OMB does not want to precommit an administration to a position. And so we worked as best we could to keep them informed and involved and see if they had any response as we proceeded along.

Mr. SACHSE. I'd like to add to that, that I was not in some of the earliest negotiations of the first round, but from the middle of the first round through the end of negotiations, I think I've been at all the major negotiating sessions, and I can't think of one where we didn't have a representative from the Department of Interior there. Mr. Bill Black, at one point, who's the Superintendent of the Everett Agency of the BIA, was appointed to be interior's representative and attended most of the meetings. And I think he's here today.

Senator GORTON. He's been at most of the meetings, right through the ones where last year, in which this—

Mr. SACHSE. Absolutely. In fact, the meeting that brought this all to a head, that when we were too far apart, got us together, was a series of meetings at Alderbrook Lodge with Congressman Dicks. Those meetings went until 1 a.m. and 2 a.m., 2 and 3 days straight, and Mr. Black was there for the entire time, and was very helpful. In fact, there was a time when we needed additional information about the properties that had been listed to go into trust, and that had been delayed, and he was able to call his office and have them fax the information up. We were quite impressed that BIA could get something faxed to us at Alderbrook Lodge. I guess there are fax machines everywhere.

So, the Department of Interior's role has been a quiet one. They have never come in and done the negotiation themselves. They left it to the other—to the two sides I guess you could say—to negotiate.

Senator GORTON. Thank you.

Senator ADAMS. Thank you.

Representative Dicks.

Mr. DICKS. Thank you, Mr. Chairman. And I appreciate the opportunity to be with you on the dias here on these questions.

Let me just—if I can clarify just a little bit. I think the administration's position from the start was, we want to be involved. We're not necessarily saying we're for or against, but we want to, you know what you're doing so that if you get too far out of touch with reality, we can let you know. And so, that's why, you know, labored very hard and diligently to make certain that the administration had designated people. And this went back to Secretary Clark, when he was Secretary of Interior. So this whole thing— there has been a series of secretaries involved and under secretaries, assistant secretaries. Earl Gjelde has been kept up to speed on this, and so we've tried our very best to keep the administration involved.

Now, one thing I just want to make certain everybody understands, I think for the record here—I know my colleagues do, but I think for the record so that others will understand, I'll address this to Harry, if this settlement is not passed in a timely way, as I understand it, we're still in court. You know, a lot of people have said, well can't you do this over several years, and we're still in court, and there is an imperative in a sense by the Judge, that, you know, we're going to give you a chance to settle this, but if it doesn't become apparent that there's considerable action and momentum, that we'll go back to litigation of this section 34 point.

Mr. SACHSE. That's absolutely right. The tidelands case is in court right now. It's stayed while we present this to Congress and to the State, but it's so much alive that the attorney for the Port has been taken the deposition of a principal witness to make sure the testimony is preserved. That's done now, but the case is on a stay, and I would assume that the judge will leave it on stay for a reasonable period of time, but you never know with a Federal judge.

Mr. DICKS. Jim, do you want to comment on the status and what that means to this?

Mr. WALDO. Well, we not only have the pending litigation which Mr. Sachse has accurately described, but until all the contributors to this settlement, the local governments, the private sector, the State government and the Federal Government have acted, the settlement will not be implemented. And until the settlement is implemented, neither the tribe will receive any benefits from this settlement, nor will the property owners who are affected by the cloud on their title be able to have that cloud lifted. And so, it's imperative that we have everyone act, as soon as possible, so we can consummate this settlement. And until that occurs in totality, it won't happen. And the tribe has made it clear, understandably, that they're not about to give up their claims until they receive everything they're promised in the settlement. And that means the cloud remains on the title.

So, it is important in terms of both capturing the opportunities and addressing some of the problems that the settlement be implemented in its entirety as soon as possible.

Mr. DICKS. Thank you, Mr. Chairman.

Senator ADAMS. Thank you.

Thank you both very much for your excellent testimony. The committee appreciates it. Your statements and documents will be filed as the Chair has previously ordered.

Senator Gorton and I are going to be alternately calling witnesses, but he is occupied at the moment, and therefore, as Chair, I will call panel 3 and we thank panel 2 for their testimony. Panel 3, the Honorable Bill Sterud, chairman, Tribal Council of the Puyallup Tribe, Tacoma, WA; the Honorable Henry John, vice chairman, Tribal Council of the Puyallup Tribe, Tacoma, WA; the Honorable Roleen Hargrove, member, Tribal Council of the Puyallup Tribe, Tacoma, WA; the Honorable Nancy Shippentower, member, Tribal Council of the Puyallup Tribe, Tacoma, WA; and the Honorable Gabe Landry, member, Tribal Council of the Puyallup Tribe, Tacoma, WA. If panel 3 will please come forward.

I see that you're now all at the table. Have you designated an order of appearance?

Mr. STERUD. Yes we have, Mr. Chairman.

Mr. DICKS. The Chairman's going to start first.

Senator ADAMS. We will have the Chairman then start first, and then if you will designate and indicate the order in which your panel will proceed, the Chair will then call them in that order.

STATEMENT OF HON. BILL STERUD, CHAIRMAN, TRIBAL COUNCIL, PUYALLUP TRIBE, TACOMA, WA

Mr. STERUD. Thank you.

Senator Adams, my name is Bill Sterud. I'm the chairman of the Puyallup Reservation. And I'm honored by this opportunity to speak before the respected elected leaders of the Houses of Congress.

I'm here today to discuss with you the views of the Puyallup Indian Tribe with respect to the Puyallup tribal land claims. For thousands of generations the Puyallup people have lived in harmony both among each other and with Mother Earth. A highly developed social order based on kinship, social ties and religion governed our people.

Our land, by growing the cedar tree, provided wood for our longhouses, bark for our clothing, canoes for transportation and fire for our warmth. Our air, clean and pure, assured us of healthy lungs and healthy bodies. And our water, pristine, pure, clear, gave us our drinking water, our fish, our clams, oysters, and sea animals. Hunger was non-existent.

I don't need to describe the horrors brought on Indian people by the settling of this great country. Whatever the guise, the westward expansion, manifest destiny, gold, the result has been the same, disaster to another Indian tribe. I submit the Puyallup Indian Tribe too has a similar story to tell.

To capitalize 135 years of gross Federal, State, and local neglect in a few minutes is impossible. The Puyallup Indian Tribe has a

membership that can be described as nothing less than courageous, with an incredible will to survive. Their continuity, the history of the people to remain as a sovereign peoples, has to be one of the great stories told. Do I talk about Puyallup Indians who were continually jailed, beaten for fishing by the State of Washington, even though the right to fish is explicit in the Medicine Creek Treaty? Do I talk about a reservation that was put in doubt as far as who owns it, whose reservation is polluted so bad that the Puyallup Reservation is now a major superfund site? Do I talk about the short life expectancy, the smog-choked air where our people cannot breathe, our people who are now being cut down in their prime by cancer, caused by who knows what? Do I talk about the tribal members who have lost their personal alloted lands to the county tax assessor? I know from personal experience, my mother and I testified in the *Andrus* v. *city of Tacoma* lawsuit to protect our personal property from the tax assessor. Do I need to talk about the racism that our people endure daily?

These are just kind of deep personal thoughts, and they aren't going to be wiped away by approving a settlement. Our people have suffered too much. But today, we're here to talk about the future.

Our people know we deserve more. Our people know what is fair. But more important, our people believe in the future. This settlement provides that future, a future securing a land base, a future securing employment and educational opportunities, a future devoted to the cleanup of our reservation and the enhancement of fish runs, a future that will provide for the continuity of the Puyallup people and our reservation, a future devoted for the tribe to the State of Washington, the city of Tacoma, Pierce County, city of Fife, city of Puyallup, Port of Tacoma to exist together for the benefit of all peoples forever.

I would like this opportunity to honor certain tribal members; Rueben Wright, Sr., Georgia Parizo, Dan Ferro, Don Matheson, Frank Wright, Sr., Don McCloud, Sr., Bob Satiacum, and Silas Cross, Sr., the Puyallup Tribal Port Land Committee, and the many other tribal members who have devoted their lives to our tribe's cause and our tribes continued existence.

I'd also like to show the appreciation of the courageous ongoing work of Congressman Norm Dicks, Senator Dan Inouye of Hawaii must certainly be applauded.

The settlement agreement represents an historic and monumental effort by all parties concerned to address through negotiations a settlement of substantial tribal claims to lands, resolution of jurisdictional conflicts, and the adoption of the fisheries dispute resolution process. The settlement agreement is the culmination of over 4½ years of tough negotiations between all of the parties.

The land claims issue of Puyallup are extremely complex that complexity stems from the actions of Congress and the Executive branch over the last 135 years. The settlement of the Puyallup tribal land claims through negotiated settlement process is a precedent of national significance. In the interest of fairness and justice I respectfully request that you pass the House/Senate bill settling Puyallup tribal land claims and ratifying the settlement agreement of August 27, 1988.

Thank you.

[Prepared statement of Mr. Sterud appears in appendix.]

Senator ADAMS. And you're going to designate who wishes to speak next?

Mr. STERUD. With your permission, Mr. Henry John, the vice chairman of the Puyallup Tribe.

Senator ADAMS. Mr. John.

STATEMENT OF HON. HENRY JOHN, VICE CHAIRMAN, TRIBAL COUNCIL, PUYALLUP TRIBE, TACOMA, WA

Mr. JOHN. My name is Henry John, and I'm the vice chairman of the Puyallup Tribal Council. Mr. Chairman, I'd like to thank the members of this committee for the opportunity to be here today. I would like to say a few words about our understanding of the fisheries aspects of the settlement. One of the most important things about the settlement document is that it makes clear that nothing in the settlement will have any effect on the tribe's fishing rights. This is very important to the tribe because of our treaty rights are sacred rights. Our fishing rights are the center of our spiritual and tribal life.

Another important thing to the tribe is that the settlement agreement does not limit the tribe's ability to go to court to stop negative impacts on the fishery, subject to the dispute resolution procedure that I'll talk about a little later.

The settlement agreement provides for a fisheries enhancement and protection program. The enhancement of the fisheries within the Puyallup River basin, including necessary habitat enhancement is a goal that all the parties agree to. The settlement agreement has a formal consultation process where the tribe and the local government entities will work to resolve differences over land use planning and regulatory decisions. This formal consultation process is required to be used within the 1873 survey area referred to by Chairman Sterud in this testimony. Outside this 1873 survey area the local government parties have agreed on a number of specific fisheries-related objectives in their land use planning and regulatory processes. For example, the adoption of watershed action plans and development of flood control studies will include alternatives sensitive to the habitat protection for our fishery resource. It is important to us that Pierce County has agreed to develop standards for gravel removal which will be sensitive to habitat protection. This is a very big problem because the actions by the county in the past have resulted in a substantial amount of siltation, and destruction of the gravel beds necessary for spawning of our various species of salmon.

In addition to these land use and regulatory measures which the non-Indian local governments have agreed to, there are two other features of the settlement agreement that are very important. First, there are provisions for guaranteeing access to the tribe's treaty fishery, including a navigation agreement. Second, there will be a fishery dispute resolution process, which will apply to projects undertaken by a party to the agreement where the action may have an in-water effect on the fisheries resource. In general, disputes with the tribe over fisheries impacts are to be mediated and arbitrated. Binding arbitration will be conducted by a three-

member panel of qualified biologists using mitigation and enhancement standards that are set forth in the settlement agreement.

The tribe views the financial and legal commitments of both the United States and the State of Washington as being important to the future of our sacred treaty-reserved fishing rights. If I could speak my heart to you today, I would ask you to bear witness to the solemn obligation the non-Indian local governments have made to protect the fishery habitat in all aspects and I would ask you to recognize the critical need for the tribe to acquire additional trust lands, over which the tribe will exercise jurisdiction to assure that sound land use and regulatory decisions are made to protect our Puyallup way of life.

Thank you.

[Prepared statement of Mr. John appears in appendix.]

Senator ADAMS. Thank you, Mr. John.

Mr. STERUD. Tribal council member, Roleen Hargrove.

STATEMENT OF HON. ROLEEN HARGROVE, MEMBER, TRIBAL COUNCIL, PUYALLUP TRIBE, TACOMA, WA

Ms. HARGROVE. Good morning. I want to thank you, Mr. Chairman, Senator Brock Adams, Senator Gorton, Representative Dicks, and I know that Senator Inouye is here in spirit, but I would also like to thank his representative, Dr. Zell, for being present as well.

My name is Roleen Hargrove. I'm a member of the Puyallup Tribal Council. I have submitted a written testimony, but I would like to discuss with you this morning some key points out of my written testimony.

One of the main goals of the Puyallup Tribe is total self-sufficiency. We see this settlement agreement as a vehicle to work toward that end. We have, as a sovereign entity, chosen to sit down with the local municipalities on a government-to-government relationship, and negotiate an agreement with them, versus litigation. It was very encouraging to see that we were able to sit down for many, many long hours and discuss the concerns of the local community, including the tribe, again, on a government-to-government relationship, working side-by-side. And we are excited to see that happening now, and hopefully continue into the future.

Today we have brought with us, to show the seriousness of the tribe on what we view as a bright future for our tribal members. We have with us a map of the port area. Within that port we have, through the agreement, been able to reacquire approximately 127 acres, as outlined by the white lines, located on the Blair Waterway. Our plans for that property, and we have been doing preplanning, because we are serious about this settlement, and very excited.

[Showing picture.]

Ms. HARGROVE. As you can see, we are looking at developing that property for warehousing, distribution, possible terminal sites, storage, et cetera. So, we are very excited and very much looking forward to working with the port, the city of Tacoma, Pierce County, the city of Fife, and all of the local municipalities in that effort. Again, I repeat, on a government-to-government level.

The opportunity that this settlement brings is providing jobs for our Tribal members, for the other 7,000 Indians that live on our reservation. And also for the community-at-large, for everyone, everyone working together. It also provides us an opportunity to begin reacquiring and continue to reacquire properties, lands to add to our reservation land base, which has been diminished over the years, as has been identified in the former testimony by the attorneys.

And that touches on the other area that I would also like to discuss. The settlement agreement recognizes that as we reacquire those lands, they will be accepted into trust using the same standards that apply to any other tribe in the United States. We ask no more than that. When we reacquire those properties, we want to see that they are placed into trust status. We are looking at working toward developing land use plans, working again, with the local government in developing those plans, in zoning, building codes, et cetera. So we do plan a future of working side-by-side. We all have to live there. And we can all benefit only by working together.

Now I want to share with you—and this reminds me of something that Senator Inouye had mentioned more than once with our tribal membership, that we cannot turn back the clock. We cannot go back 100 years. We cannot right all the wrongs that have been done.

I can tell you from personal experience the hardships our people have endured because our lands were not held in trust by the United States. As a child my mother received funds through an allotment. With that my parents purchased a lot in the town of Milton that's located on the reservation. That was in 1957. It was a two-bedroom home, and there were seven of us living there, plus relatives now and then. It wasn't an ideal situation. It was an old home. But we lived there until approximately 1964, when my mother received additional funds and built a new home on that same site. When my mother died in 1964, my father, who wasn't working at the time, had to pay off property taxes and funeral expenses by obtaining a mortgage on that property. It was during that time that it was mentioned to me that my parents felt the property should have gone into trust in the beginning since it was located on the reservation, plus the fact that the property and the home was purchased with trust funds. In 1968 my father was unable to pay off the mortgage and the bank foreclosed on that property. This is not an experience unique to my family. Many of our people have lost their lands through this same process.

In 1978, I too, along with our chairman, testified before the Honorable Gerhard Gesell in *city of Tacoma* v. *Andrus,* relating to the tribe's rights to have lands taken into trust. I'd like to cite, for the benefit of this committee the eloquent language used by Judge Gesell in his District Court opinion upholding the Secretary of Interior's authority to take lands into trust on behalf of the Puyallup Tribe.

Judge Gesell stated:

> The Puyallup Tribe, not long ago on the verge of extinction and even now with only a few acres of land, is a striking example of an entity the drafters of section 5 (referring to the Indian Reorganization Act authorizing the Secretary to take lands into trust) sought to aid. The heroic efforts of the tribe, through its members, to

improve itself were well-known to the Secretary, and his willingness to take in trust lands within the historic boundaries of the Puyallup Reservation was neither arbitrary nor irrational. He proceeded well within his discretion.

Judge Gesell also stated,

One cannot read the debate surrounding the Indian Reorganization Act without appreciating the groundswell of sympathy for the losses suffered by the Indian tribes as a result of earlier allotment and inheritance laws. Hand in Hand went the determination by Congress that the United States should aid in the recouping of these losses by restoring land to an inalienable status. Since Congress has rarely appropriated money for the purchase of trust land, reliance has rested upon us, ourselves, tribal members, as the only interested parties, to provide either the land or the money to buy land to be taken into trust for their benefit.

These words mean a great deal to our tribal members. The land is sacred. We ask that you approve the settlement agreement and fulfill the promise made to us in the Treaty of Medicine Creek to provide a permanent home for the Puyallup Tribe and our members.

Thank you for the time today.

[Prepared statement of Ms. Hargrove appears in appendix.]

Senator ADAMS. Thank you.

Mr. STERUD. Councilperson Nancy Shippentower.

STATEMENT OF HON. NANCY SHIPPENTOWER, MEMBER, TRIBAL COUNCIL, PUYALLUP TRIBE, TACOMA, WA

Ms. SHIPPENTOWER. Senator Gorton, Senator Adams, and members of the committee, my name is Nancy Shippentower and I'm a member of the Puyallup Tribal Council. I'm here today on behalf of my people.

You have heard a lot of testimony here today about the history of the Puyallup Tribe. The Puyallup Tribe, in our language, means generous people.

We have always believed that the Creator placed us on the land along the Puyallup River to be caretakers of the Mother Earth. This is a sacred responsibility, and as long as we carried out that sacred trust, the land and waters always provided all life-sustaining materials needed to survive.

About 150 years ago, when the first non-Indian settlers came to our land, the Puyallup River Valley was a land of natural abundance. Historians noted that you could walk across the river on the backs of the salmon. However, it soon became apparent to our ancestors that these settlers lacked any sense of sacred bonds to the land. They viewed the land and its resources as roads paved of gold, and we were willing to share because we are generous people. Our generosity was soon taken advantage of and the Puyallup Tribe became an obstacle to their ambition.

In hopes of appeasing these people, our ancestors ceded millions of acres to the United States in the Treaty of Medicine Creek, reserving a very modest amount of land for our own use, and carefully preserving our rights to fish, hunt and gather as a means of survival. Our reservation was soon surrounded by settlers who were not satisfied with the 99 percent of our aboriginal lands which they had already obtained through the treaty. Soon we had industry, and ambitious people who wanted what little was left of our reservation, and they found both legal and illegal ways to obtain it.

Our people became victims of genocide and ethnocide. And yet today, we stand before you as a proud race of people of this land, willing and striving to make positive social and economic changes for our tribe and the future generations. I want you to understand that our tribal members have supported this settlement because they feel it's the best means to ensure the survival of our tribe and the preservations of our treaty rights for future generations, and not because they feel that it in any way provides just or adequate compensation for the 135 years of deprivation of our lands, livelihood, and basic human rights, and of disrespect for our language, culture, religion, and government.

In the relatively short time since non-Indians began taking our land, the salmon runs have been severely depleted and the land and waters and air around Commencement Bay, and in the Puyallup River, are among the most polluted in the entire country. Maybe now non-Indians can begin to learn that the idea of having a sacred responsibility to the land has to do with their survival as well as ours. Whether they learn to or not, we intend to go on struggling to protect our homeland and resources.

Thank you.

[Prepared statement of Ms. Shippentower appears in appendix.]

Senator ADAMS. Thank you.

Mr. STERUD. And now we'll hear from Gabriel Landry, Council member.

STATEMENT OF HON. GABRIEL LANDRY, TRIBAL COUNCIL, PUYALLUP TRIBE, TACOMA WA

Mr. LANDRY. Thank you. My name is Gabriel Landry, a member of the Puyallup Tribal Council. And I'd like to express my appreciation to this committee, and my personal regards to the Honorable Senator Inouye and wishes for a quick recovery to his illness.

Today I'd like to conclude our testimony by highlighting a few of the technical aspects of the settlement that we feel are important.

The settlement provides for a per capita payment to our tribal members. This per capita will allow tribal members to purchase a house, or build a business, or address other needs that have been unmet for many years. Currently, we're in the process of establishing a system to educate tribal members regarding the opportunities that this per capita can provide.

Another issue is the tribal unemployment rate runs at approximately 65 percent. And this outrageous in an area where the unemployment rate is about seven percent for non-Indians, and is in no small part due to racial discrimination in the workplace.

The employment provisions of the settlement will be a historic first. The program will jointly be operated by the tribe and the State of Washington, using an innovative job training program which has won national acclaim. This program will train tribal members over a four-year period, and in addition a group of private businesses in our area have agreed to provide 115 full-time jobs for our tribal members.

Next, is the $22 million permanent, and I emphasize the word permanent, trust fund that will, by conservative estimates, provide $1 to $1.5 million annually to us to provide for the needs of our

elders, scholarship moneys for our young people, and for housing, cultural preservation, supplemental health care and day care, as well as other social services for all of our membership.

In addition, the settlement provides for the construction of the Blair project which Congress has previously authorized. During the negotiations it became apparent that any properties of an industrial nature which we were to obtain along the Blair Waterway would require improvements. The tribe will receive direct benefits from the Blair Bridge project, which will greatly improve access to the major industrial properties which we will receive from the Port of Tacoma. The tribe has an interest in the growth and development of the Port of Tacoma, because the settlement makes the tribe a recognized partner in the community.

The tribe has agreed to pay for the governmental services provided to the tribe or to tribal members, where those services are requested by the tribe or tribal members on trust properties. We also agreed with the city of Fife to pay a development fee for general governmental services such as school district operations based on a formula set forth in the settlement. The purpose of these agreements were to address the local governments' concerns about the tax base impacts of fee-to-trust transfers. Because Fife is wholly encompassed within the bounds of the Puyallup Reservation, the parties to the settlement recognize that the city of Fife could be significantly impacted by the loss of tax base as a result of the transfer of properties to trust status. The rest of the governmental entities have a significantly larger revenue base to draw upon, and a majority of their property tax base is outside the 1873-survey area referred to previously. Accordingly, it is the understanding of the tribe that on future fee-to-trust applications the loss of tax base will not be an issue.

This settlement makes the tribe a viable governmental entity that will be recognized in our community. We ask that you endorse this agreement for the good of us all. On behalf of the Puyallup tribal people whom we represent, we thank you, and we're available for questions.

[Prepared statement of Mr. Landry appears in appendix.]

Senator GORTON. Mr. Landry, you referred to this particular subject, so I'll direct the question to you, but any of the rest of you can answer it.

And it has to do with the $25.5 million that are included in this settlement for the Blair project. Would you tell me specifically why the Blair Waterway project is important to the tribe?

Mr. LANDRY. As indicated in the maps in the agreement and the breakdown that this committee received, the Blair Waterway is a major industrial port. The major problem at this time is the Blair Bridge, which constricts that waterway for future large shipping containers, large ships. And in order for that Blair Waterway to be fully utilized, something must be done about the Blair Bridge, either enlarging the bridge, or a bypass road. A decision is going to be made sometime in the near future. And in order for the tribe to develop these properties as indicated by these drawings here, and these drawings will be submitted for the record, that bridge must be dealt with in one form or another.

Senator GORTON. Thank you.

Senator Adams.

Senator ADAMS. Thank you.

Mr. Chairman, in an earlier round of negotiations the membership of the tribe had rejected the settlement package. Do you feel that this settlement adequately protects and preserves the tribe's inherent sovereignty, and is satisfactory to the tribal council, and to yourself as chairman?

Mr. STERUD. The previous settlement was rejected because the tribal membership thought it was inadequate. This particular settlement, historic, is not perhaps what—enough as what we deserve, but it preserves the future, and in perhaps a decade away in our children and our children's children will feel the benefits of this settlement.

This council did not come out in support of the settlement. It was too important for that. It's up to the people, and our Puyallup people voted in a 2-to-1 margin to accept it.

Senator ADAMS. Thank you very much. I have no further questions.

Senator GORTON. Representative Dicks.

Mr. DICKS. No; I have no further questions at this time.

I appreciate your testimony and you've all done, I think, a very courageous job in working on this settlement, and I just want you to know we're going to do everything we can to continue that positive spirit as we work this problem through the Congress, and we'll need your help and advice and good counsel.

Senator GORTON. Mr. Chairman, Mr. Vice Chairman, and members of the council, we really thank you for being here and for all of your successful participation.

Mr. STERUD. Thank you.

Senator ADAMS. Thank you all very much.

And now the committee will call panel 4, the Honorable Art Wang, member of the Washington State House of Representatives, Olympia, WA, Ms. Kaleen Cottingham, Executive Policy Analyst, Office of the Governor of the State of Washington, and Mr. Michael J. McCormick, Assistant Director of Local Grants Assistance Division, Office of the Governor, State of Washington.

Welcome. Representative Wang, it's a pleasure to see you here again, and the committee will be pleased to receive your testimony and then that of the other members of the panel.

Senator GORTON. You hosted us, now we're happy to host you.

STATEMENT OF HON. ART WANG, MEMBER OF THE WASHINGTON STATE HOUSE OF REPRESENTATIVES, OLYMPIA, WA

Mr. WANG. Thank you Senator. Senator Adams, Senator Gorton, Congressman Dicks, my name is Art Wang. I'm State Representative from the 27th District in Washington State. The 27th District looks much like the map that you've seen on page 15 of the brochure there.

I've also participated in the—I have an interest from the standpoint that my district is probably the single district most affected, although I think all districts in the State of Washington are affected. I've also participated in the negotiations involved with the set-

tlement, and also am prime sponsor of the bill in the House of Representatives in Washington to implement the settlement.

I've submitted written testimony, but with the consent of the committee, what I'd like to do is to depart from that to talk a little bit about two points, primarily. No. 1, the change in the State relationships, emphasizing negotiation rather than litigation with the tribe, and No. 2, the role of the State as far as how we are willing to step up to the problem in a tough budget year for us, as well, and come up with the funds to speak to the problem.

Senator ADAMS. Without objection, your statement will appear in full in the record, Representative Wang, and we'd be prepared and pleased to hear your testimony as you wish to give it.

Mr. WANG. Thank you, Mr. Chairman.

Let me start at first by acknowledging and appreciating the role played especially by both Congressman Dicks and by Senator Inouye as far as making this possible. As a former staff person, let me also acknowledge the importance of the staff role Dr. Zell has played, and convey the regards of Sue Crystal to her also.

The State currently is celebrating its 100th year, its centennial year. During our history as a State, our first 100 years have probably been marked by a lot of hostility and misunderstanding in relationships between the State and the tribes. This agreement really is a landmark as far as emphasizing the new approach, and a better approach, to work cooperatively to resolve disputes and build for the future.

In the past even the U.S. Supreme Court spoke of how at one time, just as recently as the last decade, that the State of Washington was involved in a concerted effort to frustrate the Federal judiciary, in some ways to the greatest extent since desegregation cases. Now that is changing, and the State is now in the forefront of really working on a government-to-government basis as evidenced by the role here.

The Governor has played a major role in this, and in fact, has submitted a budget for this next biennium, again a tight year, but nevertheless has included in the biennium $21 million for the settlement.

At this time, though, what we've done is to take the work of the Governor and with the support of the delegation from Congress, including Senator Inouye, Senator Gorton, Senator Adams, Congressman Dicks, McDermott, Chandler, and we certainly appreciate the testimony that all of you have provided in the legislature and appearing 1 week ago—let's see, two Fridays ago, I guess it was.

With that as an impetus, last Friday, we held a public hearing on the implementing legislation, and in fact, on Monday of this week, I'm very proud to report, that we were able to not only pass the implementing legislation out of committee, but we added to it the full $21 million appropriation. And so not only as an implementing and authorizing bill, but we included the appropriation with it, and are really facing up to the problem and recognizing that we need to make a full commitment to get things going and to get things going on an early and rapid basis as possible. I'm very pleased to say that the vote coming out of the House Appropriations Committee was 25 to 0. The bill was read into the Rules Committee on Wednesday, and I hope within about 2½ hours or so,

we'll make it to the—it will be reported out by the Rules Committee to the floor of the House for action in the next week.

At the time that Congressional delegation appeared before us, Senator Inouye said that he recognized that the legislature has difficulty and didn't expect us to act in the next month. Let me say that I hope we was wrong in that regard. I hope that we are in fact able to move the bill through the legislature as quickly as possible, and I hope that we can do it within the next month, and that certainly is my goal to do so. We will expedite things through the House of Representatives, the State Senate may be a little bit more of an obstacle, but we will do everything possible to make sure that happens.

We want to provide the impetus at the State level for the Federal Government to act, and I hope that Congress will take similar actions to do everything possible to move this bill through as quickly as possible this year, including both the authorization and the appropriation, recognizing again how your budget constraints and how difficult that is.

We are involved in a partnership, and this is again an aspect of the new relationship between the State and the Federal Government, and the tribes, in which all the parties involved, local governments, as well as private parties, too, are sharing responsibility for this. From a State perspective, we think that the Federal Government clearly has the greatest burden of responsibility, monetarily and legally in this. But the point is not to get involved in finger pointing and saying well, you really have the blame as opposed to us or whatever. That's not getting us anywhere except for down the path of more litigation. So what we want to say, is that we want to stress a partnership role and instead of litigation, let's all face up to the problem. It makes good economic sense to do so. It provides a sense of moral justice in doing so.

I pledge that we will do everything that we can in the State legislature to expedite things and to make this a reality. And I would urge you to take similar action and to do as much as possible, as quickly as possible, so that we can get this done and out of the way.

Thank you.

[Prepared statement of Mr. Wang appears in appendix.]

Senator ADAMS. Thank you, Representative Wang.

Our next witness will be Ms. Kaleen Cottingham.

STATEMENT OF KALEEN COTTINGHAM, EXECUTIVE POLICY ANALYST, OFFICE OF THE GOVERNOR, STATE OF WASHINGTON

Ms. COTTINGHAM. Good morning, Senator Adams, Senator Gorton, Congressman Dicks.

For the record, I am Kaleen Cottingham, representing today Washington's Governor, Booth Gardner. With me also is Mike McCormick, who is the Assistant Director of the Department of Community Development, who played a critical role in this from the State's perspective.

We would like to first extend our appreciation to Senator Inouye, who spent a great deal of time in the State working this issue, and helping put it all together.

I have submitted for the record the testimony of Governor Gardner, along with a copy of Governor Gardner's recent proclamation on Government-to-Government Relations, for the record. I would like to depart from that just to summarize some of the main points in it.

Senator ADAMS. Without objection, the statement of the Governor will be included in the record at this point, together with your statement, and we will be pleased to have you proceed as you wish.

[Statement of Governor Gardner and the Proclamation appear in appendix.]

Ms. COTTINGHAM. Thank you.

Governor Gardner has asked that I report to you that the State of Washington is proud to have been a participant and to continue to be a participant in this historic settlement agreement. In addition to the benefits of the settlement itself, the process evidences the State's commitment to government-to-government relationships with the 26 Federally recognized Indian tribes within the State.

This settlement and the government-to-government relationship began putting behind us over a century of distrust and open conflict. The successful implementation of this settlement will set the stage for the next 100 years and beyond. This settlement evidences that cooperation rather than litigation can result in a win/win situation and in fact, leads towards increased and improved working relationships and mutual problem solving. Because of this new sense of cooperation, we see ourselves as future partners in the economic development of the region. On January 3 of this year, Governor Gardner signed his proclamation evidencing his commitment to a government-to-government relationships. It recognizes the principal and the integrity of those relationships.

This Puyallup settlement moves the State away from its old habits of confrontation and into a new era of cooperation. Governor Gardner asks you for your support and ratification of this historic agreement by the enacting of S. 402.

The economic opportunities for this settlement are real exciting. As you've heard they are exciting for the Port from an economic point of view, as a gateway to the Pacific Rim. The settlement benefits to the State itself in several fronts. The State has lands with clouded titles, specifically several highways, and also as the originator of the title, we feel at risk. The citizens of the State also benefit economically from this settlement in greater prosperity for, not only the Pierce County area, but the State as a whole. The settlement also brings great benefits to the Puyallup Tribe. Years of litigation will be put behind us, the tribe will receive a lasting legacy of land, economic development, fisheries enhancement, and a permanent trust fund to provide social and health services to the members. Additionally, cooperative approaches in the areas such as land use and environmental, future trust lands, navigational conflicts will be established.

It carries a price tag, as you well know, approximately $162 million, a substantial price tag, but one which we are willing to share from the State's perspective. As Representative Wang has indicated, the Governor has submitted a budget which includes our share, $21 million. In addition, one of the agencies, the Department of Community Development has requested, which Representative

Wang has prime sponsored, a bill which includes two substantial aspects. First the relinquishment of the State's interest in the riverbed of the Puyallup River, and second, provisions to allow the local governments to initiate local improvement districts to assist in the funding from the local level on the private landowners.

We're on the verge of taking this historic step. The State is moving forward on both the budgetary aspects and the specific legislative aspects. Local governments have already voted to ratify their share. Private interests are ready to make their contributions. The tribe has voted two-to-one in favor of this, and we ask that you help us and move toward this settlement.

Thank you.

Senator ADAMS. Thank you very much, Ms. Cottingham.

Mr. McCormick.

STATEMENT OF MICHAEL J. MCCORMICK, ASSISTANT DIRECTOR, LOCAL GRANTS ASSISTANCE DIVISION, OFFICE OF THE GOVERNOR, WASHINGTON

Mr. MCCORMICK. Senator Adams, Senator Gorton, Congressman Dicks, I am Mike McCormick, Assistant Director of the Department of Community Development. I feel very fortunate to have been involved in this historic agreement.

I would just like to add one significant piece to what Ms. Cottingham has already said, and that is, I'm delighted to be able to let you know that the attorney general for the State of Washington, Ken Eikenberry, along with his chief deputy, Ed Mackie, have been very supportive of these negotiations. You will note in the materials that were submitted for the record with the Governor's statement, a letter from Chief Deputy Mackie, indicating the attorney general's support and articulating the concerns that will be addressed by this agreement. As Senator Gorton knows from his long and distinguished career in the State of Washington this establishes an important precedent for State and tribal relations.

Senator ADAMS. Pardon me a moment, Mr. McCormick.

I just wanted to be certain those had been submitted for the record. I have a notebook here with the testimony of the Governor, would you be certain, and we will keep the record open, and by unanimous consent they will be inserted immediately following your statement, which you are completing now, the letters that you refer to.

Mr. MCCORMICK. Yes; I would be glad to do that, Senator. Also, with your and the committee's concurrence it is my understanding that additional material is on the way from the attorney general's office to be submitted as part of the record.

Senator ADAMS. Is there objection to the record being held open for five days for the submission of additional material?

[No response.]

Senator ADAMS. Without objection it is so ordered. The record will be held open and the material will be inserted in the record when it arrives.

Mr. MCCORMICK. Thank you very much.

Just to conclude, as Senator Gorton knows, this is an historical event bringing together all of the agencies of State government in

support of this agreement. And as Ms. Cottingham and State Representative Wang have indicated, it is a truly historic event. I would join everyone else who's here today to encourage your support and ask for prompt action to join us in concluding this event.

Thank you very much. We'd be delighted to answer any questions that you might have.

[Information to be supplied appears in appendix.]

Senator ADAMS. Thank you, Mr. McCormick.

Senator Gorton.

Senator GORTON. No questions.

Senator ADAMS. Representative Dicks.

Mr. DICKS. I just want to say to Representative Wang and to the State what a great job you're doing, and appreciate the way you've moved this bill in the House of Representatives. And we wanted that to give us some momentum back here. And I think you've certain done that, and we very much appreciate the Governor's leadership here and the work of all three of you on this issue. It's been very impressive and much appreciated.

Mr. WANG. Thank you very much, Congressman.

Let me just add for Senator Gorton, in particularly, that Mr. Mackie was very instrumental in helping us both—even at Alderbrook in the negotiations there, and also in the testimony when it came for public hearing in the week after you were there. He was extremely helpful.

Senator GORTON. I'm delighted to hear that. Thank you.

Senator ADAMS. The Chair has just one request of the two representatives of the Governor's office. If you will please indicate to committee counsel the responsible party that will be communicating on behalf of the Governor to committee counsel, the committee would appreciate it, so that we may be certain that these details are coordinated, and that they come in one fashion. And if you will do that at the end of the hearing, we would appreciate it.

Senator GORTON. If panel 5 will step forward, Doug Sutherland, John Ladenburg, John Crowe, and John McCarthy.

I have you listed in the order that I called you. Mayor Sutherland, we will be delighted to start with you.

STATEMENT OF HON. DOUG SUTHERLAND, MAYOR, TACOMA, WA

Mr. SUTHERLAND. Good morning, Mr. Chairman, and members of the committee. It's our delight to be here this morning.

First of all, let me indicate that we are most pleased that you are here and that we are here. We have been working on this effort for a number of years and to find ourselves here this morning to be able to address you and to request your continued aid and assistance in this regard, to make sure that bill S. 402 is moved in a prompt and a quickly manner like what we have been able to do in other areas to complete this matter. We are most pleased.

My name is Doug Sutherland. I am the mayor of the city of Tacoma, and with me this morning is the Honorable John Ladenburg, who is the chief prosecuting attorney of Pierce County. John was a member of the Tacoma city council during the early stages of the negotiations and was most valuable, and not only in his position there, but also as the prosecuting attorney for Pierce County.

Along with me is the Honorable—my colleague—the Honorable Ron Crowe, mayor of the city of Puyallup, who has been involved in these discussions since the very beginning. Just joining us is Mr. John McCarthy, who is the vice chairman of the Port Commissioners of the Port of Tacoma, and his comments will be also before you.

These negotiations began in 1984, not as a result of initiative by the non-Indian organizations and entities around the Tacoma, Pierce County area, but began under the initiation of a letter that was addressed to Congressman Norm Dicks and myself, among others. And it was from that initiation that these discussions began. And I'd like to indicate that that very wise and thoughtful letter was what really began these overall negotiations.

I received that letter and it laid on my desk for 1 week to 10 days, and I looked at it several times and finally I picked up the phone and contacted Congressman Dicks, and said, Norm, what do you think? Do you believe that this is a way, do you believe that this might be fruitful? And if you're willing to help and assist, I'm willing to bring the other non-Indian groups together to be able to make this negotiated settlement proceed. We also contacted you, Senator Gorton, and you indicated strong support for a negotiated process, as opposed to a litigated process. And we find ourselves here this morning, absolutely amazed that we have been able to achieve what we have been able to achieve.

This settlement is indeed of the greatest importance to the city of Tacoma, and to all of the people of the State of Washington.

The people of our city and members of the Puyallup Tribe have lived together for more than 100 years. Our co-existence has not always been easy.

We have a history of dispute, distrust and bad communications, and it has hurt us all. These conflicts over history have been more or less public, more or less contentious, and more or less destructive depending on what the local politics were at the time, and the personalities involved. We now have an opportunity, with the help of Congress, to put that history behind us.

The city of Tacoma and the Puyallup Tribe have two general kinds of disputes which this settlement addresses:

First, there have been ongoing disagreements over the authority of the city government and the tribal government within the historic boundaries of the Puyallup Reservation. Questions as fundamental as police authority, the power and obligation to tax, the obligation to protect the health and welfare of the public, zoning authority, business regulations and other fundamental jurisdictional powers and obligations have been unclear and subject to dispute.

The second source of dispute between the Puyallup Tribe and property owners within our city has to do with the unresolved claims to that land.

For many reasons which you have already heard about, the Puyallup Tribe has claims against ownership of lands now in the hands of non-Indians. The lands upon which these claims are made are the industrial heart of the city of Tacoma.

These outstanding claims cloud title to these lands. Because of the tribe's sovereign treaty status, we at the local level have no access to any court to resolve these claims without the tribe's con-

sent. The sale, transfer and investment in these lands have been significantly impaired, and this has had a dramatic negative effect upon the development of business and industry in our city.

What we received form this settlement is predictability as to the resolution of these and many issues. The settlement agreement represents the product of 5 years of work and negotiations that provide a mechanism for resolving these disputes at home and between ourselves. It allows us to avoid the cost, delay and uncertainty of litigation, and to solve these problems through consultation and compromise.

In human terms the opportunities for cultural understanding, coexistence and economic growth are greater than ever before. The community of our Indian and non-Indian peoples are ready to pull together as never before.

We need your support and assistance to solve these problems, and to move forward in cooperation and mutual assistance. I urge your support for this measure. And I'm most pleased to say thank you so very much for being here and allowing us to come before you.

[Prepared statement of Mr. Sutherland appears in appendix.]

Senator GORTON. Thank you for that eloquent statement.

Mr. Ladenburg, we'd like to hear from you.

STATEMENT OF JOHN LADENBURG, CHIEF PROSECUTING ATTORNEY, PIERCE COUNTY, WA

Mr. LADENBURG. Thank you. I'm John Ladenburg, prosecuting attorney for Pierce County, and as the chief attorney for the civil and criminal matters that come before county government, I think this agreement is a very important step forward for progress between the government-to-government relations that need to exist with the tribe and Pierce County.

Pierce County is a county of a little more than half a million people. We have 18 incorporated towns and cities. The county government, naturally, interacts with all of those other governments on a government-to-government basis. The encouraging thing about this agreement, is that we were able to agree with the tribe that they would become part of that process, and much of the language of the agreement itself is language of agreements between the already—from agreements that already exist between the other governments in the county, in terms of inter-local agreements and inter-local cooperation between governments. So the tribe now is going to be able to step up to become a government in the full sense of cooperation with other local governments, and I'm very encouraged by the jurisdictional aspects of this agreement, that I think are very well stated on behalf of both the tribe and local governments, so that we can participate fully.

On behalf of the county of Pierce, and the people, we would like to thank the tribe for coming forward to the table, because as I mentioned yesterday, probably the one party that did not have to be at the table, that did not have to come forward was the tribe. And the tribe very generously came forward, offered to negotiate, negotiated long and hard, came back to the table when we failed after the first agreement, and the tribal council is to be congratu-

lated, I think, for their efforts on that behalf, and on behalf of their people.

The county of Pierce looks forward to working with the tribe on a government-to-government basis, and I think that the people of Washington will be well-served by this agreement, and the people of the United States will be well-served by this agreement.

[Prepared statement of Mr. Ladenburg appears in appendix.]

Senator GORTON. Thank you very much.

Mayor Crowe.

STATEMENT OF HON. RON CROWE, MAYOR, PUYALLUP, WA

Mr. CROWE. Thank you. Distinguished Chairman Gorton, Senator Adams, Congressman Dicks, I am Ron Crowe, mayor of the city of Puyallup, the daffodil and raspberry capital of the Nation. [Laughter.]

Home of the nationally known Puyallup Fair, and also of the outstanding football team of the State of Washington.

Senator GORTON. The best blueberries—

Mr. CROWE. I did forget—excuse me, please, get blueberries into the record.

The name Puyallup has a special significance. Obviously, it's an Indian name. It means the land of generous people. I think the spirit of this agreement very clearly is exemplified in the name Puyallup, and fits well here.

It also gives me a great deal of pleasure to announce that the Puyallup City Council has unanimously ratified this agreement, and we've already appropriated moneys for our share in this agreement.

The proposed Puyallup Tribal Settlement will establish a process for the parties to cooperate in the future. This process has not existed in the past and disputes have resulted in distrust and litigation. The by-product has been conflict and suffering on both sides. The 4 years we have spent together negotiating the proposed agreement has built a mutual respect and a foundation whereby all parties can move forward to successfully implementing this agreement.

I am here today to ask Congress to join us, Indians and non-Indians in being a major partner of this agreement.

Puyallup is a residential community of 21,000 population located in a highly urbanized area of Puget Sound. We have some fundamental interests at stake which will be resolved if Congress, along with the administration, take the necessary steps to implement this agreement.

Our city has properties which are at risk as a result of the claims, particularly the riverbed claims. The city's wastewater treatment plant which was financed by Federal grants from the Environmental Protection Agency, the State of Washington, and local rate payers is located on the former riverbed of the Puyallup River. The tribe has prevailed before the Supreme Court against the Port of Tacoma on ownership of the former riverbed. Should the tribe bring a claim to the land in which the treatment plant is located, it could very likely result in a long drawn-out court battle and potentially the relocation of our $25 million facility.

In addition to land, the Puyallup Tribe claims certain governmental jurisdictional rights over all the area which lies within the 1873 surveyed reservation. A portion of the city of Puyallup lies within that described land area.

At present, the majority of this land is developed and is occupied by non-Indian homeowners and businesses. The rights of governmental jurisdiction by the Puyallup Indian Tribe include imposing property taxes, land use planning, zoning regulations, building code regulations, business regulation and taxes, police and fire protection, and environmental regulations.

When this settlement agreement is implemented, these issues will be resolved. The tribe agrees to relinquish all land claims which include the former Puyallup riverbed. This will allow the city of Puyallup with certainty and predictability, to continue to make capital investments in upgrading the wastewater treatment plant. The agreement will ensure environmentally clean discharge of treated sewage into the Puyallup River.

Additionally, this agreement provides that the tribe will not assert governmental jurisdiction to non-Indians on the reservation. This means that the tribe will not attempt to tax or assert police powers over non-Indians, lands, businesses, and homeowners. However, the tribe will continue to have jurisdiction over trust lands as provided in current Federal law.

The Puyallup Tribal Agreement provides for a partnership approach between governmental entities, Puyallup Indian Tribes and local governments that at present does not exist. It establishes governmental authority and responsibility through a system for consultation and dispute resolution for land use matters and environmental concerns. The agreement describes a cooperative procedure for determining how future tribal lands are placed in trust, and how future governmental services are to be provided. We believe we have laid a foundation for a future of mutual respect and cooperation.

The opportunity before us can demonstrate that through negotiation and hard work, everyone becomes a winner. I respectfully request that you and Congress join us to enact the Puyallup Tribal Agreement.

Thank you.

[Prepared statement of Mr. Crowe appears in appendix.]

Senator GORTON. Thank you, Mayor Crowe.

Mr. McCarthy.

STATEMENT OF JOHN McCARTHY, VICE PRESIDENT, PORT COMMISSIONERS, PORT OF TACOMA, TACOMA, WA

Mr. McCARTHY. Thank you. Senator Gorton, Congressman Dicks, Senator Adams, my name is John McCarthy and I'm an elected commissioner of the Port of Tacoma. I'm also an attorney and the Secretary of the Washington State Ports Association.

Some 45 years ago members of my family began working on the Port of Tacoma waterfront, and about 24 years ago I started as a casual longshore worker, discharging rubber from Indonesia, meat from New Zealand, and loading vessels with pulp products, lumber, timber, and logs. I'm pleased to be here today on behalf of the Port

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of Tacoma to testify in support of the Puyallup Tribe of Indians Settlement Act of 1989.

The ports in Washington State were created by statute to foster economic development and to create jobs in their respective communities. A graphic example of the important role played by ports in Washington is that one out of every five jobs in our state is created by international trade, over 15,000 in Pierce County alone. In the United States only Alaska is more dependent on trade.

The Port of Tacoma has grown dramatically in recent years and it is now the 6th largest container port in North America and the 20th largest container port in the world. That compares with five years ago when we were the 76th largest container port in the world. In 1988, 15.1 million short tons of cargo passed through our port, which was an increase of 49 percent in one year alone, over 1987. Our major export commodities include lumber, grain, machinery and fruit. We are the true transition point from which our balance of trade is being effectuated. We are also actively and successfully involved in promoting manufacturing and distribution throughout the United States in facilities at the Port.

We have grown largely because of our ideal location for Pacific Rim trade, our deep-water terminal facilities, our state-of-the-art intermodal rail technology, and our efficient labor force, together with the acreage that we have available for development. Our growth has been inhibited, however, by the unresolved claims of the Puyallup Tribe to land in and near the Port of Tacoma and by the historical conflicts between the tribal interest in the development of the fisheries resource and the Port's mandate to create economic development and job opportunities.

We have been pleased to be a major actor in the negotiations to resolve these disputes. The Port of Tacoma will contribute $43 million to this settlement in cash and valuable industrial and waterfront land. And this will certainly give the Puyallup Tribe the opportunity to become an active participant in international maritime activities.

We support this settlement. We believe that it holds the promise of a new era of cooperation and economic progress for all the citizens of our region, and it will allow us to continue to play a major and growing role in strengthening our Nation's position in the world marketplace.

We recently completed a study of the economic impact on marine terminals and industrial development if we were to fail to settle this dispute with the tribe. This study concluded that $500 million in capital improvement projects over the next 10 years, would in all likelihood come to a standstill. This would result in the loss of over 6,000 permanent jobs and over 18,000 temporary construction jobs, as well as $504 million in additional gross sales within the State.

If this settlement is approved, however, the Tacoma area will benefit from a dramatic expansion of Pacific Rim trade throughout our region. In particular, the opening of the Blair Waterway to new marine development will enable both the Port and the Puyallup Tribe to meet a large portion of the expected new demand for marine terminal facilities in Puget Sound.

Mr. Chairman, we can no longer allow the fact that we are Indian and non-Indian to divide us. This settlement is just a beginning and we look forward to working with the Puyallup Tribe in the future for the benefit of our entire community.

Thank you very much for your attention, sir.

[Prepared statement of Mr. McCarthy appears in appendix.]

Mr. SUTHERLAND. Mr. Chairman, if I might add, Mayor Crowe had indicated that his counsel had voted unanimously in support of this settlement. I might add that all of the local government entities, the city of Puyallup, the city of Fife, the city of Tacoma, the Port of Tacoma, and Pierce County, all of those voted unanimously in support of this settlement.

Further, we all supported it financially, and have expended in excess of a million dollars out-of-pocket, and thousands of man-hours of staff time in the process of doing the negotiation, and the development, and the study of data necessary to reach this point.

Senator GORTON. Now that statement about the unanimous support, at least just a few months ago, was not true, as I remember it, with respect to the city of Fife?

Mr. SUTHERLAND. That is quite true.

Senator GORTON. Has it changed?

Mr. SUTHERLAND. It has indeed. What we did, and as Mr. Landry had indicated during his testimony, that there was a problem in the city of Fife, because of the difficulty of placement of land in trust, and by doing that would erode the tax base of the city and its ability to be able to deliver services necessary to its citizens. And so we were able to come to an understanding as to what kind of limitations would be put there. And as such, and with that agreement, the city of Fife then rejoined the overall agreement of the non-Indian local entities, and they, too, passed that on a unanimous vote.

Senator GORTON. Thank you.

Mr. McCarthy, I want to ask you the same question that I asked of the panel which included the tribal council members, and it respects the $25.5 million for the Blair Waterway project. Could you tell me why that project is important to the Port of Tacoma?

Mr. MCCARTHY. Yes, sir.

The Port of Tacoma has over 600 acres of undeveloped land and most of it is on, or very near, the Blair Waterway. A recent study conducted by the State Ports Association indicates that the Puget Sound, Washington State and the Puget Sound will need 11 additional container terminals by the year 2005, to meet the growing trade with our Pacific Rim nations.

The Port of Tacoma has all but developed all the land outside of the Blair Bridge. The land inside the Blair Bridge, in order to be fully developed and utilized, and to fully develop these marine terminals, will require either a new bridge, or the elimination of the existing bridge and a road around.

The tribe will benefit. They will have the ability to develop one of those terminals, if they so choose, within that waterway. The Port will likewise have a similar ability, and the ability to use those inner lands for distribution and other warehouse facilities. So that is a major part, and a major motivation and reason why the Port has been a major contributor to this agreement, the fact that

we will be able to take care of the Blair sitcom project to the benefit of both the tribe and the Port.

Senator GORTON. Thank you.

Thank you, Mr. Chairman.

Senator ADAMS. Thank you very much, Senator Gorton.

Mayor Sutherland, I know you've been personally involved in these negotiations for a number of years. What do you project as the relationship between the Indians and non-Indian communities, and the city of Tacoma, as a result of this settlement?

Mr. SUTHERLAND. We've had several disputes, some of which are in the record that was presented to you this morning. We continue to have interrelationships between the tribe and my city as a result of our continued effort to work with the problems of our environment, to be able to resolve the difficulties that have been in place now for several years, and we will work together rather than separately in order to be able to improve those circumstances and situations. We will quit fighting the fight of what happens with the placement of land in trust, whether or not it's understood as to whether or not that's beneficial to the city, or beneficial to the tribe. It's beneficial to all of us. And we will no longer have those kinds of difficulties. And we'll continue to work on the basis of better employment of members of the tribe, and along with the private sector involvement in our settlement, develop job placement and training so that those members of the tribe whose unemployment rates are substantially greater than the non-Indian members of our community. They will become a vitality in our community that is necessary and wanted.

I believe that this new relationship and the ability to sit down at the table in the process of consultation and development, and to be able to come to compromise as we develop these new projects. And we will be able to maintain a much closer and a much more understanding process than we've ever had before.

Senator ADAMS. Thank you, Mr. Mayor. I have no further questions.

Do you have any questions, Representative Dicks?

Mr. DICKS. I'll just be very brief. I was very pleased to hear again the importance of the Blair sitcom project, the East-West Road. I think it's an essential part of this agreement. Obviously extremely important to the future of the Port and to the community, and to the tribe. And we've been asked about that, and I'm glad we were able to make that record.

And I want to say to the Chairman, both Chairmen, our cochairmen today, that I will have to excuse myself at the end of this panel, and I very much appreciate the effort here today and I think this has been a very successful hearing.

Senator ADAMS. Thank you, Representative Dicks.

Thank you very much, gentlemen. We appreciate your testimony.

The final panel is panel 6, Mr. Cory McFarland, president, McFarland Cascade, Tacoma, Mr. Karl Anderson, vice president, Concrete Tech, Tacoma, WA

Welcome, gentlemen, it's a pleasure to have you with us this morning, and we are prepared to hear your testimony.

STATEMENT OF CORY McFARLAND, PRESIDENT, McFARLAND CASCADE, TACOMA, WA

Mr. McFARLAND. Thank you, Senator Adams and Senator Gorton. I am Cory McFarland, and I appreciate the opportunity to testify today on behalf of the private sector. I am chairman of the Commencement Bay Tideland Owners Committee, which represents approximately 75 individuals and companies located in the tideland areas of the Puyallup River Delta, which are affected by the Puyallup Indian tribal land and jurisdictional claims. The committee was established in 1984 to ensure that the interests of the property owners in the affected area would be properly represented through a negotiation process with the intent of reaching a settlement, thereby avoiding costly and lengthy litigation. All parties, fortunately, reached an accord in August of 1988, after over 4 years of continual negotiation.

My personal involvement in this process began in early 1984 with the co-founding of this committee, with Mr. Karl Anderson and others because of the claims specifically affecting my company's assets. I am president of McFarland Cascade, which is a family-owned small business holding company, which has owned and operated a wood preservation and lumber remanufacturing facility on the Commencement Bay tidelands since the early 1930s. My company directly employs approximately 250 people at six sites in the four Northwest States and Canada, with over 120 of those employed at the manufacturing facility and corporate headquarters in Tacoma.

The original operating facility of Cascade Pole Company, one of the McFarland Cascade Group, was located on land leased from the Port of Tacoma. In the 1950s, Cascade Pole purchased more than 30 acres adjacent to the Puyallup River as our future operating site. In 1972, Cascade Pole was advised by the Port of Tacoma that they must move from the leased property, due to the Port's rapid development of containerized shipping facilities. In the next 2 years, Cascade Pole acquired 13 additional acres adjacent to that previously owned, and during 1974 and 1975 established a very modern, state-of-the-art wood processing and pressure treating facility with a very substantial capital investment. The company continued to make improvements in capital expenditures at that site over the succeeding years for dry kilns, storage buildings, and lumber remanufacturing facility until 1983.

Bank financing at that time was easily available, especially using collateral on the tide flats, which was considered to be very desirable as the tide flats were a scene of similar broad and robust development. Our company was fortunate in securing a substantial mortgage on that property and improvements to refinance basic debt in early 1983, when our corporate headquarters was moved to Tacoma from Northern Idaho. Initial title insurance for that mortgage was issued with exceptions to the Puyallup Indian tribal land and jurisdictional claims. However, the exception for land claims was deleted after the company's strong objection pointing out that the property was entirely outside of the boundaries of the Puyallup Indian Reservation. The fact that the title company agreed to delete this exception indicates the then current lack of awareness

of any land claims by the Puyallup Indian Tribe except for the riverbed claims against the Port of Tacoma. We soon learned, however, that the property just outside the reservation was included in the dispute, as we received notice from the tribe that they intended to include our company in the lawsuit against the Port of Tacoma and Union Pacific. However, we were dropped from that suit soon after that, but we found that no further term financing was possible at our site, subsequent to the initiation of that lawsuit, and therefore, we were prevented from making any further capital investment on that site.

Many of the members of the Commencement Bay Tideland Owners Committee have since experienced similar inability to secure mortgage financing for development and expansion of their operations within the area due to the title insurance exceptions for the Puyallup land claims. Sales of real estate and operating businesses in the last five years have dwindled to very nearly zero, although there are many aging for sale signs in the area. Very few real estate brokers, frankly, including those of national recognition, will seriously list property in the affected area as they know that the transactions cannot be completed without clear title. In essence, the economic development of the area has come to a stand still pending the resolution of both the land and jurisdictional claims on the tidelands, as well as the riverbed areas of the Puyallup River.

We would like to submit into the record copies of letters from local title insurance companies indicating their refusal to issue title insurance without the exceptions for these land claims, as well as letters from banking institutions refusing to grant financing due to these claims.

Senator ADAMS. Without objection, the letters and other documents referred to will be included in the record to the committee.

Mr. MCFARLAND. Thank you.

The lack of resolution of these claims through the implementation of the current settlement agreement would not only send this issue back to the courts for an indeterminate time, at great cost to all parties involved, but would continue to depress the property values, development and job creation in the area, since the owners cannot sell nor finance development without clear title.

Many of these businesses would continue to see their net worth diminish due to the inability to realize the full value from the assets of the businesses. These individuals and owners purchased their properties and developed them at substantial investment with the understanding that they had clear title and were unaware of any claims by the Puyallup Tribe. Now they find that these investments are in real jeopardy.

The business community looks forward to a resolution of this conflict and has offered to cooperate with, and assist the Puyallup Indian Tribe in employment and development opportunities for the benefit of the entire community. We want to come out of this as friends and partners rather than enemies and in court battles.

All of the parties to this negotiated settlement have been sincere in their efforts to resolve this issue and to maintain balance and goodwill in the accord. They also represent a broad spectrum of the community and governmental support. Members of our organiza-

tion and other residents and business owners in and around the Puyallup Indian Reservation urge the committee's and Congress' endorsement and Federal funding of the settlement agreement. This agreement means a great deal to the Port and city of Tacoma, Pierce County, Washington State, and frankly, we believe our Nation, as it represents a model for a negotiated, rather than a litigated solution to a very real and serious land and jurisdictional claims between Indian and non-Indian communities.

I would particularly like to thank Senator Daniel Inouye, Senator Slade Gorton, and Congressman Norm Dicks for their efforts in helping the parties resolve these differences. Thank you for this opportunity.

[Prepared statement of Mr. McFarland appears in appendix.]

Senator ADAMS. Thank you very much, Mr. McFarland.

Mr. Anderson.

STATEMENT OF KARL ANDERSON, VICE PRESIDENT, CONCRETE TECHNOLOGY CORP., TACOMA, WA

Mr. ANDERSON. Senator Adams, Senator Gorton, my name is Karl Anderson. Along with Cory McFarland, I'm the co-founder of the Commencement Bay Tideland Owners Committee, which represents 75 businesses of which 66 are small family-owned businesses in the area. I'm also vice president and treasurer of Concrete Technology Corporation, which is a family-owned business in the tide flats.

This has been a long drawn-out process. And it's a real pleasure for me to be here today before the Senate Select Committee on Indian Affairs. There are other people who have played an important role in this process who have not testified. I would like the record to recognize their contribution. First is Mr. Ray Corpuz, who is director of Intergovernmental Affairs for the city of Tacoma, and now for Pierce County. He played an instrumental role from the very first day, and was a member of the negotiating team to see this through. Also Mrs. Chris Towne, a very important staff member from the very beginning of this. And Congressman Dicks' aide, Tim Thompson, who's played a very crucial role in bringing this, and more recently Lynn Anderson, who's director of Intergovernmental Affairs for the Port of Tacoma. They've all put an extraordinary effort into this.

I've submitted my written testimony, along with a statement from Richard Carkner, who's chairman of the Puyallup Riverbed Landowners Association. I'd like those to be shown in the record.

Senator ADAMS. Without objection those will be placed in the record at this point in the record.

[Prepared statements of Mr. Anderson and Mr. Carkner appear in appendix.]

Mr. ANDERSON. Thank you, sir.

I'd like to give an oral summary, by stating that the private landowners are trapped in a situation which was not of their creation, and which they had no knowledge of when they acquired their properties.

The problems that we face today originated over 130 years ago. We don't know who's right or wrong. We may never know. It may

never be decided. We're looking to resolve these problems and go forward.

Up until about 5 or 6 years ago, people lived without any knowledge of these claims. And this cloud that's come upon us is a real tragedy for a lot of people. There are landowners now, who cannot sell their property. Their businesses are closed, the property is sitting there vacant and they can't sell, they can't get their money, that's their lifetime investment, they can't get their money out. There are homeowners who are stuck in the riverbed area in a similar situation. People move, but they're unable to sell their homes. It's a real burden on many of those people.

In my own case, my father and his brother, some 40 years ago, started a business in what's a filled tideland area. Bit by bit they built the business up, and bought additional property, until today we employ 200 people and have about 35 acres of property. We are unable to use the value of that property as collateral for business loans. We want to improve our business, modernize it, we are not able to do that. Up until perhaps 1 month ago, we were able to get title insurance with the exceptions for Indian claims. We knew those would be there. In the past 2 weeks I've talked to two of the major title insurance companies about getting insurance. They both declined to issue policies. The first company has taken the position they will not issue title insurance for any property they do not now have a policy in force on. The other company has said they will not issue any title insurance in the area, because they don't believe they can write an exemption that is strong enough to withstand the claim if these problems are not resolved.

Contrary to the public belief that the problems are getting better now because of the vote, and many in the community think the problems have already been resolved. They have not been resolved, they are beginning to get worse. We have a lot of people who are hanging on, hoping that they will be able to see these resolved soon. If they're not, those people might slip away on us.

The private sector is prepared to work in cooperation with the tribe and its members to help them come into the community, be a part of the community, help them with jobs, with training, help them set up businesses, work in joint ventures, whatever way to make them a full partner with us in our community.

We ask that this committee approve the legislation that's before you, and that the Congress join us in Pierce County and the State and go forward together.

Thank you.

Senator ADAMS. Thank you very much for your excellent testimony.

Senator Gorton.

Senator GORTON. No questions. Thank you, Mr. Chairman.

Senator ADAMS. I have no questions.

We appreciate very much your testimony, and on behalf of Senator Gorton and myself we want to thank all of those who have traveled far and spent many hours preparing this testimony. It was

an excellent presentation by a large number of people who've obviously spent a great deal of time and are very well informed.

This committee will stand at adjournment.

[Whereupon, at 12:25 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

STATEMENT BY SENATOR ADAMS BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON PUYALLUP LAND CLAIMS SETTLEMENT LEGISLATION

Mr. Chairman, I am pleased to join Senator Gorton and Congressman Dicks in testifying today before the Senate Select Committee on Indian Affairs. S 402, which we have recently introduced, provides for the settlement of land claims of the Puyallup Tribe of Indians in the state of Washington.

This legislation would authorize the federal role as outlined in an agreement developed last summer between the Puyallup Tribe, local governments in Pierce County, the state of Washington, the United States of America, and private property owners. This agreement is designed to settle all outstanding land claims by the Tribe.

The total settlement amounts to $161.844 million. The federal share is $77.25 million, which means that more than one-half of this settlement will be paid by state and local governments, and by private landowners.

The agreement has been accepted by the Puyallup Tribe, local governments in Pierce County, and private property owners. It will become effective once it has been implemented at the state and federal levels. Later this morning the committee will hear from state legislators concerning the status of state legislation to implement this agreement.

The Committee will hear today from representatives of the groups that put together this agreement. Tribal leaders, the state of Washington, local governments, private corporations, private landowners: all have played a role in making this agreement become a reality.

Their individual futures were at stake during the negotiations over this settlement. Their common interest in the future of our state kept them at the table for countless hours of negotiation. Through their collective leadership we have today an agreement that promises a bright future for the Tacoma/Pierce County community, the Puyallup Tribe and the entire Pacific Northwest.

This settlement is significant to Washington state for several reasons. During much of our state's first one hundred years Washington state tried to resolve most Indian claims through litigation. That approach led to lengthy, expensive and frequently bitter court battles that benefited no one. The last several years have seen a new emphasis on resolution through cooperation and negotiation. This settlement is proof that our citizens have found a new way of doing business on Indian issues in Washington state.

Second, this settlement is unique in that the land in dispute is not typical reservation land, located in some remote, rural area. Instead it is right in the heart of the second largest city in Washington state. Prime commercial real estate, multiple municipalities and land owners, a maze of jurisdictional issues, the economic future of a significant urban area are all involved. These factors create a conflict of enormous complexity. Given these challenges, this settlement is indeed of historic proportions.

Finally, this settlement is vital to the future economic health of Washington state. The current state of affairs hurts both Indians and non-Indians. The Puyallup Tribe has been deprived for many years of much of its land base, and the chance to develop long-range opportunities for the economic benefit of tribal members. This is a long-standing injustice that must be made right.

At the same time, uncertainty over these land claims has created hardships for non-Indians. Private landowners have had clouded titles to their land. Corporations and municipalities have been uncertain about the impact of these claims on their plans for the future.

The Port of Tacoma has been prevented from developing critical long-range plans that will allow it to compete for vital Pacific Rim trade.

This is why prompt implementation of this settlement is so important. Without implementation, these claims will drag on for years in the courts. Regardless of who ultimately wins and who loses on paper in that battle, both sides will pay enormous and unrecoverable costs during that struggle. Time will be lost in planning for our state's future that can never be recovered.

The federal government's share of this agreement will contribute to the economic growth and stability of the entire region. There are several reasons why this is appropriate.

First, the federal government, through the trust responsibility , has an obligation to facilitate and implement settlement of Indian land claims.

Second, inconsistent federal actions in creating the original Puyallup Indian Reservation directly contributed to the development of this conflict. The federal government should recognize this historical role, and do its part to solve the problem.

Finally, this settlement will serve as a model for resolving similar conflicts in other parts of the country. This settlement, as I said before, is an extremely complex challenge. If it can be done in Tacoma, Washington, it can be done in other communities as well.

In conclusion, Mr. Chairman, I commend both you and my colleague from Washington state, Congressman Dicks, for the tremendous perseverance and leadership you have shown on this issue. Without your work, we would not be here today, and on behalf of all the citizens of the state of Washington I thank both of you very much.

TESTIMONY OF

SENATOR SLADE GORTON

before the

SELECT COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

FEBRUARY 24, 1989

Mr. Chairman:

I am pleased to be here today to lend my wholehearted support to S. 402, the "Puyallup Tribe of Indians Settlement Act of 1989".

Before I begin my formal testimony, I want to take a moment to formally express my deep appreciation to the Chairman of this committee, Senator Inouye. Senator Inouye has earned the respect of my colleagues on both sides of the aisle by reason of his integrity, his knowledge of the issues, his evenhandedness and his plain hard work. The people of Washington State are fortunate, indeed, that Senator Inouye chairs this committee. It is difficult to imagine someone else who would have committed so much time and energy to resolving a dispute that was not within his state's boundaries. I am convinced that without Senator Inouye's personal involvement, his repeated trips to the state, and his reputation as a man we can all trust, we would not be here today.

Secondly, I want to thank the Congressman whose district is affected by these claims, Norm Dicks. Norm has been a tireless advocate for a negotiated settlement. He spent many weekends shuttling between Washington, D.C. and Washington State. He knows the red-eye flights all too well. Norm worked diligently with the team of negotiators asserting their positions and hammering out the final compromise. Norm, I also want to thank you for a job well done.

The word, historic, is too often misused, but it appropriately describes the Puyallup settlement. In my view what is perhaps most significant about this settlement, is that all parties to the disputed lands worked together to find a solution that will benefit everyone. This task was far from easy. Generations of mistrust and lack of cooperation had to be overcome. People who previously had not spoken to one another, except in the courts, sat down week after week for four years, to resolve disputes that originated over one hundred years ago.

As many in this room know, as a former Attorney General of Washington State, I have had some experience with litigation and in Indian issues. I had a job to do then, but I have another job now -- a much more pleasant job and one that I feel good about. This legislation, which implements the federal share of a negotiated settlement between the Puyallup Tribe and the non-Indian residents of the State of Washington, brings us into a new and more promising era. Years and years of uncertainty, and the great expense to all parties that litigation brings, will be avoided by the successful implementation of the Puyallup settlement.

For my colleagues who are not familiar with this legislation, let me first briefly describe what brought the various parties to the negotiating table and why we are here before the Congress today. The Puyallup tribe entered into the Treaty of Medicine Creek with the United States in 1854. Through a series of

actions that will be described in more detail by others, the tribe's landbase resulting from that treaty was severely eroded. The tribe's traditional means of self-sufficiency was greatly reduced. The land to which the tribe could assert some claim, the title to which is cleared by this settlement, involves prime, developed, space. These lands include portions of Puyallup, Fife, Pierce County and Tacoma, the second largest urban area in the State of Washington. They encompass the Port of Tacoma, the sixth largest container port in North America. It involves industrial areas surrounding the port which are owned by private parties who cannot obtain business loans for expansion because of the potential claims. Ordinary citizens in surrounding smaller towns are also affected as they do not have clear title to their homes. What makes this settlement so unique, and frankly so costly to resolve, are the locations of the disputed lands.

The overall settlement package will be funded by the Federal government, the State of Washington, the Port of Tacoma, the City of Tacoma, private businesses, Pierce County, the City of Puyallup and the City of Fife. The federal government is a responsible party both because of its historic role and because of its trust responsibility to the Puyallup Tribe. Nonetheless, the Federal government will contribute less than half of the overall total.

The Federal share of the settlement package is $77.25 million. These monies will be used by the Tribal members to better their

lives and to build a base to provide for future generations. Every effort was made not only to address today's problems, but to support economic development opportunities in the future. Funds are provided for land acquisition, infrastructure improvements, job training, small business assistance, housing, health care and social services.

Perhaps most significantly, this agreement puts behind us a history of confrontation, and puts before us one of cooperation. You will hear the word partnership mentioned many times from the other witnesses. It is a good description of a new relationship among the parties to this agreement, Partnership brings together people who share common goals and interests, who will work together for a mutual objective. I hope the committee will support this legislation and help us see the realization of that goal.

Thank you.

Bush 88 Quayle

November 3, 1988

West Harrison Street
, Washington 98119
284-4221

402 West Main
Spokane Washington 99201
(509) 624-6329

STATEMENT BY VICE-PRESIDENT BUSH

Slade Gorton has briefed me on your historic Puyallup Tribal Land Claims Settlement, which will provide a permanent resolution of these conflicts, and bring lasting benefits to your community, the port, and the Puyallup Tribe.

This settlement can serve as a national example of how to solve these conflicts while investing in our future. You have my pledge that one of the first actions in my Administration would be to assign a team to work with you to implement the settlement.

FILE

DANIEL J EVANS
WASHINGTON

GORDON, THOMAS, HONEYWELL,
LANCA, PETERSON & DANIEL

88 NOV -9 PM 9:22

RCVD BY_____

United States Senate
WASHINGTON, DC 20510

November 7, 1988

Mr. James Baker
Bush-Quayle Campaign
733 15th N. W.
Suite 800
Washington, D. C. 20005

Dear Jim:

Thank you for your assistance in obtaining a decision by the Vice President to support the Puyallup Indian Land Settlement. Slade asked me to convey his thanks as well as my own. We look forward to working with the Bush Administration to implement this Settlement.

We are doing everything possible to communicate the Vice President's and Slade's supporting commitment to implementing this Settlement to as many people in Pierce County as possible.

Thank you for your assistance.

Sincerely,

DANIEL J. EVANS
United States Senator

DJE:jp
bcc: Jim Waldo

Were waiting for tomorrow with fingers crossed!

ish 88 Quayle

FILE

November 3, 1988

831 Morrison Street
Washington 98119
184-4221

422 West Main
Spokane Washington 99201
(509) 624-6329

STATEMENT BY DELLA NEWMAN
Chair of Bush for President Committee
State of Washington

"I'm here today at the request of Vice-President Bush to personally convey his commitment to working with Senator Gorton to get this impressive settlement implemented.

Vice-President Bush knows how significantly it will benefit Pierce County and the State of Washington. It can show the way for resolution of these conflicts elsewhere in the nation."

PREPARED STATEMENT OF HON. NORM DICKS, US REPRESENTATIVE
FROM WASHINGTON

IT IS INDEED A GREAT PLEASURE TO APPEAR BEFORE YOU THIS MORNING TO PRESENT TESTIMONY ON BEHALF OF S. 402, THE "PUYALLUP TRIBE OF INDIANS SETTLEMENT ACT OF 1989," AND TO LEND MY FULL SUPPORT FOR THE SETTLEMENT WHICH THE BILL AUTHORIZES. OUR PRESENCE HERE TODAY REPRESENTS AN HISTORIC STEP AND A NEW BEGINNING, FOR BOTH THE PUYALLUP TRIBE AND THE NON-INDIAN COMMUNITY.

PLEASE ALLOW ME TO GIVE YOU A BRIEF HISTORY OF RECENT EVENTS LEADING UP TO THE NEGOTIATIONS BETWEEN THE PUYALLUP TRIBE AND THE PIERCE COUNTY COMMUNITY. IN ADDITION TO OTHER LAND AND JURISDICTIONAL CLAIMS AFFECTING THE PIERCE COUNTY AREA, THE PUYALLUP TRIBE ASSERTED AND WON OWNERSHIP OF 12.5 ACRES OF FORMER RIVERBED IN PUYALLUP TRIBE V. PORT OF TACOMA IN JULY OF 1981.

IN 1983, THE NINTH U.S. CIRCUIT COURT OF APPEALS UPHELD THE LOWER COURT'S DECISION ON PUYALLUP TITLE TO THE 12 ACRES OF BOTTOMLAND.

IN JUNE OF 1984, THE U.S. SUPREME COURT DENIED CERT. ON THE PORT OF TACOMA'S APPEAL OF THE NINTH CIRCUIT COURT DECISION.

THESE THREE COURT DECISIONS PROMPTED THE PUYALLUP TRIBE TO WRITE A LETTER IN 1984 TO MYSELF AND DOUG SUTHERLAND, MAYOR OF THE CITY OF TACOMA, PROPOSING A NEGOTIATED SETTLEMENT TO RESOLVE THEIR DIFFERENCES RATHER THAN ENTERING INTO A LONG AND PROTRACTED LEGAL BATTLE OVER ALL OF THE TRIBE'S LAND AND JURISDICTIONAL CLAIMS. THUS THE NEGOTIATIONS BETWEEN THE TWO PARTIES BEGAN.

NEGOTIATIONS BETWEEN THE TWO PARTIES RESUMED AGAIN IN FEBRUARY OF 1988, WHEN THE TRIBE REQUESTED A THREE MONTH STAY OF THE COURT PROCEEDINGS TO PERMIT ONE FINAL ATTEMPT AT NEGOTIATING A RESOLUTION TO THE CLAIMS. IN AUGUST OF 1988 THE TRIBAL MEMBERSHIP VOTED ON THE CURRENT AGREEMENT AND APPROVED IT BY A TWO-TO-ONE MARGIN.

THE PROCESS HAS BEEN LONG AND AT TIMES EXTRAORDINARILY DIFFICULT. I AM HERE THIS MORNING TO ASK THAT THE CONGRESS, THROUGH THE PASSAGE OF H.R. 932 AND S. 402, AND THROUGH THE APPROPRIATIONS PROCESS, PROVIDE THE SUPPORT NECESSARY TO IMPLEMENT THE PROVISIONS OF THE PUYALLUP INDIAN SETTLEMENT. THE

SETTLEMENT PACKAGE THAT WAS AGREED TO BY THE PUYALLUP TRIBE AND NON-INDIAN PARTIES IS A COMPREHENSIVE AND BALANCED PACKAGE. IT IS ONE THAT IS FAIR TO ALL SIDES, POINTS TO A POSITIVE FUTURE, REPRESENTS A WISE INVESTMENT OF FEDERAL DOLLARS, AND IS AN EXAMPLE OF WHAT CAN HAPPEN WHEN PEOPLE ARE WILLING TO WORK TOGETHER FOR THE COMMON GOOD.

ALTHOUGH THIS SETTLEMENT ALONE CANNOT REDRESS ALL OF THE PERCEIVED INJUSTICES OF HISTORY, IT DOES REPRESENT A TREMENDOUS STRIDE FORWARD THAT WILL SERVE TO FOSTER POSITIVE COMMUNITY RELATIONS. WITHOUT THIS AGREEMENT, THE PARTIES WOULD HAVE NO CHOICE BUT TO PURSUE THEIR INTERESTS THROUGH A COURSE OF LITIGATION.

THIS WOULD BE UNFAIR TO ALL CONCERNED, AND THE ISSUE OF FAIRNESS MUST BE A CORE CONSIDERATION IN THESE MATTERS. TO DRAG THIS OUT IN LITIGATION IS NOT FAIR TO THE TRIBE, TO THE CITIZENS OF PIERCE COUNTY, TO PROPERTY HOLDERS, TO BUSINESS OWNERS, TO THE LOCAL GOVERNMENTS, AND TO THE PORT OF TACOMA, ALL OF WHICH WOULD STAND TO SUFFER OVER CIRCUMSTANCES THAT THEY DID NOT HISTORICALLY CREATE. WHAT IS IMPORTANT ABOUT THE COURSE OFFERED THROUGH THE SETTLEMENT AGREEMENT, IS THAT THE VARIOUS PARTIES HAVE THROUGH THEIR OWN FREE WILL AND EFFORTS, FASHIONED A SETTLEMENT OF TRIBAL CLAIMS THAT HOLDS THE PROMISE OF A BETTER AND BRIGHTER TOMORROW FOR ALL INVOLVED.

THE PUYALLUP SETTLEMENT WILL RESOLVE AT LEAST FIVE CATEGORIES OF CLAIMS:

--LANDS WHICH FORMED THE BED OF THE PUYALLUP RIVER BEFORE THE
U.S. CORPS OF ENGINEERS RECHANNELED THE RIVER, NOW OCCUPIED BY HOMES, FARMS, INDUSTRIAL DEVELOPMENT, AND ROADS;

--TIDELANDS WHICH WERE FILLED AS A RESULT OF FEDERAL NAVIGATION PROJECTS, NOW A CENTRAL PART OF THE PORT OF TACOMA'S TERMINALS;

--A TWO SQUARE MILE "INITIAL RESERVATION" WHICH IS THE HEART OF TACOMA'S CENTRAL BUSINESS DISTRICT;

--UPLANDS ADJACENT TO THE TIDELANDS IN THE PORT, WHICH ARE ALLEGED TO HAVE BEEN INACCURATELY SURVEYED;

--PUBLIC ROADS AND UTILITY RIGHTS-OF-WAY WHICH LIE WITHIN THE "INDIAN ADDITION", A SECTION OF LAND WITHIN A RESIDENTIAL AND COMMERCIAL AREA NEAR DOWNTOWN TACOMA.

THESE CLAIMS AFFECT HUNDREDS OF MILLIONS, IF NOT A BILLION DOLLARS WORTH OF PROPERTIES AND IMPROVEMENTS IN THE SECOND

LARGEST METROPOLITAN AND PORT AREA IN THE STATE OF WASHINGTON--AN AREA WITH A POPULATION CLOSE TO A HALF MILLION. HOMEOWNERS, FARMERS, BUSINESSES AND LOCAL GOVERNMENTS FACE CLOUDS ON TITLE TO THEIR PROPERTIES, INHIBITING OR MORE LIKELY TOTALLY BARRING SALE OF PROPERTY, USE OF LAND AS COLLATERAL FOR LOANS, AND ISSUANCE OF BONDS FOR PUBLIC IMPROVEMENTS. GIVEN THE TRIBE'S SOVEREIGN IMMUNITY, THIS SITUATION COULD CONTINUE INTO THE NEXT CENTURY WITHOUT A SETTLEMENT.

IN ADDITION TO THE TRIBE'S CLAIMS TO PORTIONS OF THE RESERVATION, CONGRESS, THE EXECUTIVE BRANCH AND THE FEDERAL COURTS HAVE ALL ACTED IN RECENT YEARS TO EXPAND TRIBAL JURISDICTION OVER ENTIRE RESERVATIONS, INCLUDING NON-INDIAN PROPERTIES. IN THIS INSTANCE, THOSE LANDS AMOUNT TO MORE THAN 95 PERCENT OF THE 18,000 ACRE RESERVATION.

THESE EXTENSIONS OF AUTHORITY DO NOT ACCOMMODATE OUR UNIQUE SITUATION, AND WILL, INEVITABLY, LEAD TO A WHOLE NEW SERIES OF ISSUES TO BE RESOLVED BY THE U.S. SUPREME COURT, OR TO BE PRESENTED TO CONGRESS FOR RESOLUTION.

ABSENT THIS SETTLEMENT, THE MEMBERS OF THE PUYALLUP TRIBE WILL REMAIN IN THE SAME POSITION THAT THEY HAVE HELD FOR THE PAST TWO DECADES -- WITH THE ONLY CERTAIN PROSPECT THAT OF ENDLESS LITIGATION. THESE PEOPLE HAVE EXPERIENCED COURT BATTLES, VIOLENCE AND COMMUNITY MISTRUST. WHILE GEOGRAPHICALLY A PART OF THE LARGER COMMUNITY, THEY HAVE LIVED APART.

FEDERAL LAWS AND POLICIES HAVE CREATED OR FUELED THESE CONFLICTS. NOW, WE HAVE A CHANCE TO BRING JUSTICE AND COMMON SENSE TO BEAR ON THE SITUATION, WITH GREATLY IMPROVED OPPORTUNITIES FOR THE WHOLE COMMUNITY, INDIAN AND NON-INDIAN ALIKE.

AS WILL BE FURTHER EMPHASIZED THROUGH THE TESTIMONIES OF ATTORNEYS SACHSE AND WALDO, THE UNITED STATES GOVERNMENT HAS RESPONSIBILITY FOR THE HISTORICAL CIRCUMSTANCES THAT LED TO THE DISPUTES AND DISAGREEMENTS THAT HAVE PRECEDED THIS SETTLEMENT. THEREFORE, IT IS FULLY JUSTIFIED FOR THE CONGRESS TO MAKE AVAILABLE THE $77.2 MILLION THAT COMPRISES THE FEDERAL SHARE OF THE $161 MILLION AGREEMENT PACKAGE. WHILE I DO NOT DENY THAT $77.2 MILLION IS A SIGNIFICANT AMOUNT OF MONEY TO ASK FROM THE FEDERAL TREASURY, I BELIEVE THAT IT IS POSSIBLE TO MAKE AN EXCEEDINGLY STRONG CASE THAT THESE FUNDS ARE A WORTHY INVESTMENT THAT WILL CREATE SUBSTANTIAL ECONOMIC RETURNS THAT WILL BE FELT FOR DECADES IN THE AFFECTED COMMUNITIES AND WILL SEND REVENUES BACK INTO THE FEDERAL TREASURY. WHAT IS ALSO SIGNIFICANT ABOUT THE REQUESTED FEDERAL SHARE OF THIS SETTLEMENT, IS THAT IT IS BELOW THE 50/50 FEDERAL/LOCAL MATCH THAT IS AN INFORMAL STANDARD

SET FOR INDIAN SETTLEMENTS. THE PUYALLUP SETTLEMENT CALLS FOR A 48 PERCENT FEDERAL MATCH.

THIS SETTLEMENT REPRESENTS A REMARKABLE ACHIEVEMENT FOR THE FEDERAL GOVERNMENT, STATE OF WASHINGTON, THE PIERCE COUNTY COMMUNITY, AND THE PUYALLUP TRIBE. IT WILL RESOLVE ONCE AND FOR ALL THE LONGSTANDING LAND CLAIMS AND JURISDICTIONAL DISPUTES WHICH HAVE HINDERED DEVELOPMENT AND CLOUDED RESIDENTIAL AND COMMERCIAL PROPERTY IN THE CITY OF TACOMA, PORT OF TACOMA, FIFE AND SOUTH PUGET SOUND. IN ADDITION, THESE PROLONGED DISPUTES HAVE KEPT THE PUYALLUP TRIBE FROM REALIZING ITS FULL ECONOMIC AND CULTURAL POTENTIAL.

OVERALL, THE SETTLEMENT IS WORTH $161.844 MILLION DOLLARS. AS I MENTIONED PREVIOUSLY, THE FEDERAL SHARE IS $77.250 MILLION.

UNDER THE AGREEMENT THE TRIBE WILL ACQUIRE CLOSE TO 900 ACRES OF LAND. THESE PROPERTIES AND CERTAIN IMPROVEMENTS HAVE AN ESTIMATED CURRENT VALUE OF OVER $37 MILLION. THIS INCLUDES LAND ON THE BLAIR WATERWAY SUITABLE FOR DEVELOPMENT INTO A MARINE TERMINAL THAT CAN BE USED FOR INDUSTRIAL DEVELOPMENT, RECREATION, AND FISHERIES ENHANCEMENT. THE FEDERAL GOVERNMENT IS BEING CALLED UPON TO CONTRIBUTE $500,000 TO THIS FUND TO PURCHASE APPROXIMATELY 600 ACRES OF FOREST AND RECREATIONAL LAND.

I BELIEVE THAT ONE OF THE OUTSTANDING FEATURES OF THE SETTLEMENT CALLS FOR 265 TRIBAL MEMBERS TO BE ELIGIBLE TO PARTICIPATE IN A JOB TRAINING PROGRAM. IN ADDITION, THE FEDERAL GOVERNMENT WILL CONTRIBUTE APPROXIMATELY $9.5 MILLION FOR ECONOMIC DEVELOPMENT AND LAND ACQUISITION.

$2 MILLION WILL BE AVAILABLE TO THE TRIBE TO START OR EXPAND SMALL BUSINESS ENTERPRISES. THE FEDERAL GOVERNMENT IS BEING ASKED TO CONTRIBUTE APPROXIMATELY $500,000 TOWARD THIS FUND.

ONE OF THE MOST IMPORTANT ASPECTS OF THIS AGREEMENT TO THE PUYALLUP TRIBE WAS THE FISHERIES PLAN. THE PUYALLUP TRIBE'S FISHING RIGHTS ARE CRITICAL TO THE TRIBE'S CULTURE. IN THE AGREEMENT, OVER $10 MILLION WILL BE PROVIDED TO SUPPORT FISHERIES ENHANCEMENT.

THIS SETTLEMENT WILL ALSO REDUCE THE CONFLICTS BETWEEN FISHING AND SHIPPING ACTIVITIES IN PUGET SOUND. FOR THE FIRST TIME, THE TRIBE, STATE, AND LOCAL GOVERNMENTS WILL WORK TOGETHER TO INCREASE PRODUCTION THROUGH: WATERSHED ACTION PLANS, SHORELINE MASTER PROGRAMS, LAND USE AND RESOURCE PLANS AND REGULATIONS.

THE FEDERAL GOVERNMENT WILL BE ASKED TO CONTRIBUTE $100,000 WHICH WILL BE USED TO PROVIDE NAVIGATIONAL LIGHTS AND OTHER

EQUIPMENT TO REDUCE CONFLICT BETWEEN TRIBAL FISHING AND COMMERCIAL TRAFFIC.

THE AGREEMENT ALSO CREATES A $24 MILLION FUND THAT WILL PROVIDE A ONE-TIME PAYMENT OF APPROXIMATELY $20,000 TO EACH ADULT MEMBER OF THE TRIBE. THESE PAYMENTS WILL GO TO EACH 21-YEAR OLD CURRENTLY ENROLLED IN THE TRIBE, AND TO EACH YOUNGER MEMBER UPON REACHING THAT AGE. THIS FUND WILL BE SET UP THROUGH CONTRIBUTIONS BY THE FEDERAL GOVERNMENT AND OTHER PARTIES. THE FEDERAL GOVERNMENT'S SHARE IS $22,350,000.

IN RECOGNITION OF THE MANY CRUCIAL NEEDS FACING THE TRIBAL MEMBERSHIP, THE SETTLEMENT AGREEMENT INCLUDES IMPORTANT PROVISIONS AIMED AT MEETING CRITICAL SOCIAL SERVICE NEEDS AND BETTER PROTECTING THE WELL-BEING OF THE MEMBERS OF THE PUYALLUP NATION.

CENTRAL TO THIS GOAL, A PERMANENT TRUST FUND IS ESTABLISHED TO ADDRESS THE NEEDS OF THE TRIBAL MEMBERSHIP, INCLUDING: HEALTH CARE, TRIBAL ELDERS CARE, HOUSING REHABILITATION, BURIAL AND CEMETARY MAINTENANCE, EDUCATION AND SCHOLARSHIP LOANS, DAY CARE FOR THE TRIBE'S CHILDREN, AND CULTURAL PRESERVATION ACTIVITIES. THIS TRUST FUND AMOUNTS TO $22 MILLION. CONGRESS IS BEING ASKED TO APPROPRIATE $18,800,000 TO THE PERMANENT TRUST FUND.

A CRITICAL PROVISION IN THE AGREEMENT PROVIDES THE TRIBE WITH PROPERTY FOR A MARINE TERMINAL ON THE BLAIR WATERWAY. IN ADDITION, $51 MILLION WILL BE PROVIDED TO DREDGE THE WATERWAY AND BUILD A BYPASS ROAD OR A NEW BRIDGE OVER THE WATERWAY WHICH WILL BENEFIT BOTH THE TRIBE AND THE NON-INDIAN COMMUNITY. THE FEDERAL CONTRIBUTION TO THIS PROJECT IS $25.5 MILLION.

THE TRIBE WILL CONTINUE TO HAVE JURISDICTION OVER TRUST LANDS, AS PROVIDED IN CURRENT FEDERAL LAW. THE TRIBE WILL RELEASE ITS CLAIMS TO TIDELANDS, FORMER RIVERBEDS, INITIAL RESERVATION, AND OTHER LAND CLAIMS KNOWN AND UNKNOWN. THE TRIBE WILL HAVE THE OPPORTUNITY TO PURCHASE ADDITIONAL LANDS AND HAVE THEM PLACED IN TRUST UNDER THE SAME CONDITIONS AS OTHER TRIBES.

THE TRIBE AGREES NOT TO ASSERT GOVERNMENTAL CONTROL OVER NON-INDIAN LANDS, BUSINESSES, AND HOMEOWNERS, ALTHOUGH THE TRIBE WILL RETAIN ITS AUTHORITY IN THE AREA OF FISHERIES.

A COOPERATIVE APPROACH WILL BE ESTABLISHED FOR GOVERNMENTAL AUTHORITY AND RESPONSIBILITY, INCLUDING: A SYSTEM FOR CONSULTATION AND DISPUTE RESOLUTION FOR LAND USE MATTERS AND ENVIRONMENTAL CONCERNS, AN AGREEMENT WHICH RESOLVES NAVIGATIONAL CONFLICTS, AN AGREEMENT ON HOW FUTURE GOVERNMENTAL SERVICES ARE

TO BE PROVIDED, AND THE ESTABLISHMENT OF FUTURE PROGRAMS RELATED TO FISHERIES AND FLOOD CONTROL.

FUTURE DEVELOPMENT OF SPECIFIC PORT AND MARINE-RELATED PROJECTS ARE PROVIDED FOR, ALONG WITH ACCOMPANYING FISHERIES MITIGATION AND ENHANCEMENT.

THE TRIBE AND OTHER GOVERNMENTS AND DEVELOPERS WILL USE A BALANCED PROCESS FOR DEVELOPMENT PROJECTS IN ORDER TO PROTECT AND ENHANCE THE FISHERY. THE TRIBE AND THE FEDERAL, STATE, AND LOCAL GOVERNMENTS WILL USE A FAIR AND OPEN PROCESS FOR TRUST LAND APPLICATION AND REVIEW.

THE TRIBE AND LOCAL GOVERNMENTS WILL USE A GOVERNMENT-TO-GOVERNMENT CONSULTATION PROCESS FOR LAND USE MATTERS. THE TRIBE AND LOCAL GOVERNMENTS WILL USE A COOPERATIVE SYSTEM FOR LAW ENFORCEMENT. THE AGREEMENT WILL REDUCE THE CONFLICTS BETWEEN FISHING AND SHIPPING ACTIVITIES.

AS OF THIS DATE, I AM HAPPY TO REPORT THAT EVERY LOCAL GOVERNMENT INVOLVED WITH THE SETTLEMENT HAS APPROVED ITS SHARE OF THE AGREEMENT. THE CITY OF TACOMA, PIERCE COUNTY, THE PORT OF TACOMA, THE CITY OF PUYALLUP, AND THE CITY OF FIFE HAVE ALL CAST UNANIMOUS VOTES OF APPROVAL.

AS YOU WILL HEAR LATER, IT LOOKS LIKELY THAT THE STATE OF WASHINGTON WILL APPROVE ITS SHARE OF THE SETTLEMENT. HOWEVER, THE FEDERAL GOVERNMENT MUST ALSO APPROVE ITS $77.25 MILLION SHARE, BEFORE THE SETTLEMENT CAN BE IMPLEMENTED.

MR. CHAIRMAN, BEYOND A NEGOTIATED SETTLEMENT, THE ONLY OTHER MEANS AVAILABLE TO THE TRIBE AND THE NON-INDIAN COMMUNITY TO RESOLVE THEIR DISPUTES, IS THROUGH THE COURT SYSTEM. BUT I AM CONVINCED THAT THE LITIGATION APPROACH WILL ONLY LEAD TO INTERMINABLE LEGAL BATTLES AND FURTHER ALIENATION. THE U.S. COURT SYSTEM HAS NOT PRODUCED ENCOURAGING RESULTS FOR EITHER SIDE, NOR HAVE THE COURTS PRODUCED ANY TYPE OF CERTAINTY IN INDIAN ISSUES. IN MATTERS SUCH AS THESE, WE ARE ALL BETTER SERVED BY NEGOTIATING AN AGREEMENT WHICH RESPECTS THE NEEDS OR BOTH PARTIES.

I BELIEVE THAT THE SETTLEMENT OF THE PUYALLUP LAND CLAIMS ISSUE CAN SERVE AS A NATIONAL MODEL FOR RESOLVING THESE TYPES OF DISPUTES. THE SETTLEMENT WILL FOSTER A MORE POSITIVE STATE OF RELATIONS BETWEEN THE PUYALLUP TRIBE AND THE NON-INDIAN COMMUNITY.

FEDERAL APPROVAL OF THE SETTLEMENT OFFER WILL REPRESENT AN IMPORTANT STEP IN A LONG JOURNEY. THERE IS NO WAY TO CORRECT THE WRONGS OF THE PAST. HOWEVER, WE MUST BE SENSITIVE TO THE FACT

THAT, HISTORICALLY, INDIAN PEOPLE HAVE BEEN MISTREATED BY OUR GOVERNMENT. INDIAN TREATIES HAVE BEEN BROKEN AND INDIAN LAND AND CULTURE HAVE BEEN TAKEN AWAY.

HOWEVER, THIS AGREEMENT IS ABOUT THE FUTURE. IT CAN SYMBOLIZE A NEW ERA IN INDIAN RELATIONS. ONE WHERE PRESENT INDIAN AND NON-INDIAN CHILDREN WILL ENTER THE YEAR 2000 AS FRIENDS AND PARTNERS POISED TO TAKE FULL ADVANTAGE OF THE OPPORTUNITIES THAT MAY BE AHEAD.

IT IS TIME FOR A NEW BEGINNING, ONE THAT OFFERS HOPE AND A BRIGHT FUTURE TO INDIANS AND NON-INDIANS ALIKE.

I WOULD URGE THIS COMMITTEE TO GIVE ITS FULL SUPPORT TO THE PASSAGE OF H.R. 932, AND SUPPORT ALL ACTIONS NECESSARY TO SEE THAT THE SETTLEMENT AGREEMENT IS IMPLEMENTED IN A TIMELY MANNER WITH REQUIRED FEDERAL FUNDING.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY.

PUYALLUP TRIBAL SETTLEMENT 1989

FEDERAL PARTICIPATION

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RATIONALE FOR SETTLEMENT OF THE PUYALLUP TRIBAL CLAIMS

BACKGROUND

The Puyallup Tribe had both the fortune and misfortune to live at the future site of the City of Tacoma, Washington, and the Port of Tacoma. The Tribe's Reservation boundaries include portions of the City of Tacoma. The Port of Tacoma is built on the disputed tidelands of the Reservation. The Puyallup River and the waters of the Port are within the Tribe's customary fishing grounds. The Railroad rights-of-way leading to the Port cross the Reservation.

The juxtaposition of the Reservation, City and Port has led to inevitable conflict, and to the loss of most of the Tribe's land.

The loss of Tribal land came about as a result of various Acts of Congress around the turn of the Century, which allotted and ended the trust status of most of the land on the Reservation at a time when neither the Tribe nor its members had the sophistication to manage their own property. Land was lost through foreclosure or tax sale. Other land was ordered sold to create additions to the City of Tacoma. Tidelands claimed by the Tribe were patented by the State. The Tribe became an underclass, not participating in the economic growth of the area that had once been its own. The people of the Tribe were left with a strong and justified sense of the injustice done them.

LITIGATION

In the past 25 years the Tribe has had considerable success in gaining recognition of its treaty rights and in restoring portions of its lost lands. In three United States Supreme Court cases, referred to as Puyallup I, II, and III, the Tribe's fishing rights in the Port of Tacoma and in the Puyallup River were recognized. A decision of the Ninth Circuit upheld the continued existence of the Tribe and its Reservation against challenges by the State. A federal district court in the District of Columbia recognized the Secretary of the Interior's right to take land in trust for the Tribe and its members, and the independence of tribal land from local regulation. Federal courts in the District of Columbia and in Tacoma have enjoined construction in the Port of Tacoma where tribal fisheries were threatened.

More recently, the Tribe asserted and won ownership of a portion of the former riverbed (now dry) of the Puyallup River, putting ownership of substantial other parts of now exposed riverbed at issue. The Tribe's claim to ownership of a portion of the Port of Tacoma is presently pending in the United States District Court for the Western District of Washington. The Tribe's claim to ownership of a portion of downtown Tacoma, as a result of changes in the Reservation boundaries shortly after the first Reservation was laid out, has not been litigated.

This continuous litigation, and potential litigation, has caused severe economic impacts on the communities of Tacoma, Fife, Puyallup, the Port of Tacoma, and Pierce County. It has been expensive for the Tribe, the United States, the State of Washington, local governments, and private property owners, and has created a climate of conflict rather than cooperation between governments.

NEGOTIATION

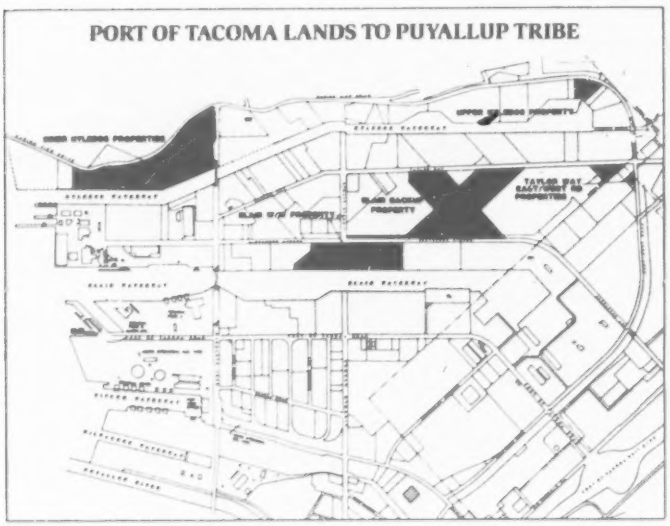
With the belief that all of the people of the community would benefit from a settlement, the Tribe approached the local governments about negotiating a settlement of the remaining disagreements between them. Leaders of both the Tribe and the non-Indian community agreed that it was in their interests to seek permanent resolution of the disputes through negotiation, not litigation.

The settlement process has been arduous. A first agreement, accepted by the local governments and the Tribal Council, was rejected by a vote of the people of the Tribe. Litigation then resumed and construction in the Port was halted. A second round of settlement negotiations was then begun, building on the agreements worked out in the first, but tailoring the settlement more closely to the needs of the Tribe, State and local governments.

The new settlement agreement has now been approved by the Tribe and all of the local governments. Governor Gardner has endorsed it, and an appropriation is expected from the Washington State Legislature sometime this spring.

This settlement will end an era of strife and conflict and bring a new era of partnership, progress and economic growth for the entire community. The federal government's approval will represent the final step in a long journey.

MAP OF LANDS TO THE TRIBE



Additional Properties not shown:

Torre Property in Fife

Union Pacific Property in Fife

Forest, recreation, and cultural areas
(To be purchased by the Tribe)

ELEMENTS OF THE SETTLEMENT

LANDS

The Tribe will acquire close to 900 acres of land. These properties and certain improvements have an estimated current value of over $37 million. This includes land on the Blair Waterway suitable for development into a marine terminal and other lands that can be used for industrial development, recreation, and fisheries enhancement.

ECONOMIC DEVELOPMENT/JOBS

265 Tribal members will be eligible to participate in a four-year job training program, and 115 Tribal members will be provided jobs in private sector businesses in Pierce County.

Economic development and land acquisition assistance will be provided to the Tribe through a $9.5 million fund.

$2 million will be available to stimulate economic development by providing Tribal members with funds to start or expand small business enterprises.

FISHERIES

The Tribe will retain its treaty fishing rights. Additionally, over $10 million will be provided to support fisheries enhancement, including more than $9 million for discretionary use by the Tribe. This Settlement will also reduce the conflicts between fishing and shipping activities in Commencement Bay.

The Tribe and state and local governments will work together to increase fish production through: watershed action plans, shoreline master programs, land use and resource plans and regulations, and environmental regulations.

SOCIAL/HEALTH/WELFARE

A $24 million fund will be created and will provide an approximate one-time payment of $20,000 to each adult member of the Tribe. These payments will go to each 21-year-old member currently enrolled in the Tribe, and to each younger member upon reaching that age. The exact amount may be slightly higher or lower depending on the applicable interest rate, the exact number of enrolled Tribal members, and the age distribution of Tribal members on the date the fund is established.

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$22 million will be placed into a permanent trust fund for the benefit of the Tribe and its members. The purpose of the fund is to provide the Tribe a permanent resource that enhances the ability of the Tribe to provide services to its members. This fund will be used for housing, needs of the elderly, burial and cemetery maintenance, education, supplemental health care, day care, and other social services. This fund will pay out approximately $88 million over the next 50 years and will continue to produce income permanently.

Specific community and health services support will be provided, including a group home facility, a youth substance abuse facility, a day care center, and computer equipment. Tribal members will receive funds for training in alcohol counseling, day care, child welfare, mental health, and social service management.

GOVERNMENT AUTHORITY AND COOPERATION

The Tribe will continue to have jurisdiction over trust lands, as provided in current federal law. The Tribe will release its claims to tidelands, former riverbeds, initial reservation, and other land claims known and unknown.

The Tribe agrees not to assert governmental control over non-Indian lands, businesses, and homeowners, although the Tribe would retain its authority in the area of fisheries.

A cooperative approach will be established for governmental authority and responsibility, including: a system for consultation and dispute resolution for land use matters and environmental concerns, a procedure for determining how future lands go into trust, an agreement which resolves navigational conflicts, an agreement on how future governmental services are to be provided, and the establishment of future programs related to fisheries and flood control.

Future development of specific port and marine-related projects are provided for, along with accompanying fisheries mitigation and enhancement.

The Tribe and other governments and developers will use a balanced process for development projects in order to protect and enhance the fishery. The Tribe and the federal, state, and local governments will use a fair and open process for trust land application and review.

The Tribe and local governments will use a government-to-government consultation process for land use matters. The Tribe and local governments will use a cooperative system for law enforcement. The Agreement will reduce the conflicts between fishing and shipping activities.

BLAIR PROJECT

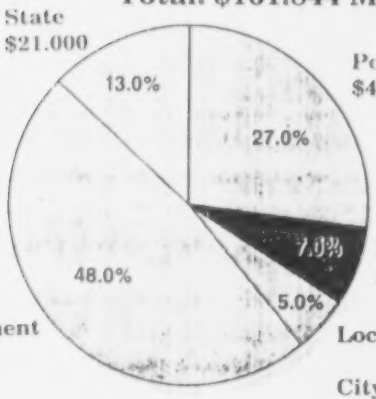
A critical provision in the Agreement provides the Tribe with property for a marine terminal on the Blair Waterway. In addition, $51 million will be provided to dredge the waterway and build a new bridge over the waterway, or go toward building a bypass road which will benefit both the Tribe and the non-Indian community.

FEDERAL SHARE OF PUYALLUP TRIBAL SETTLEMENT

Item	Amount (Thousands)	Purpose
Economic Development and Land Acquisition	$ 9,500	The Tribe will receive $9.5 million to buy land, and to pursue economic opportunities for steady future income.
Small Business Assistance	500	Tribal members will receive a $2 million fund to help start or expand small businesses.
Blair Project	25,500	The widening and developing of the Blair Waterway will greatly expand shipping opportunities for both the Port of Tacoma and the Puyallup Tribe.
Fisheries	100	$100,000 will be spent to provide navigational lights and other equipment to reduce conflict between Tribal fishing and commercial traffic.
Forest and Recreational Lands	500	$500,000 will be used to purchase open space, forest and cultural lands for uses to be determined by the Tribe and its members. It is estimated this amount would purchase approximately 600 acres.
Direct Payment Fund	22,350	The Tribal members will receive $24 million that will be placed in an annuity fund or other investment program. Each Tribal member 21 years or older will receive approximately $20,000. Younger members will receive the same amount when they turn 21.
Permanent Trust Fund	18,800	A $22 million permanent trust fund will be established to provide funds for housing, elderly needs, health care and other social services. Only the income from the fund will be spent and the principle will remain intact.
TOTAL	**$77,250**	

Settlement Contributions

Total: $161.844 Million

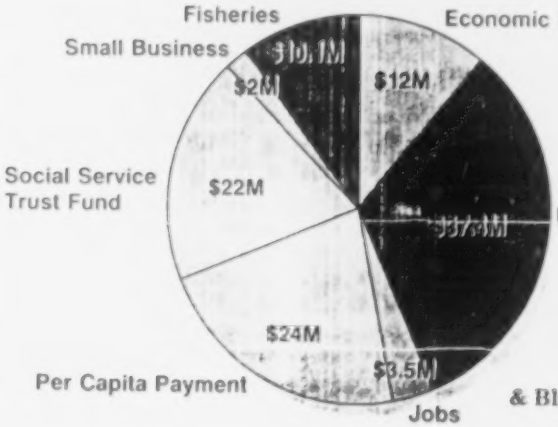


Local Governments

City of Tacoma	$6.133
City of Puyallup	$ .250
City of Fife	$ .100
Pierce County	$2.633

Settlement Agreement

Total Value: $161.844 Million



QUESTIONS AND ANSWERS ON THE PUYALLUP TRIBAL SETTLEMENT

1. **Q.** *Why should the U.S. Congress contribute to the Puyallup Settlement?*

A. A series of federal actions and inconsistent policies caused both the poverty of the Puyallup Tribe and the litigation that required settlement.

The United States in the Treaty of Medicine Creek guaranteed the Puyallup Tribe a suitable reservation as a "permanent home" in return for the Tribe's cessions of large areas of land. A suitable reservation was not provided, which led to hostilities. An enlarged reservation was created by Executive Order in 1857, but the federal surveys of it never conformed to the intent of the parties, as seen by the Tribe or federal officials of the time, and were inconsistent with each other.

The rights that have been asserted by the Tribe with considerable success over the last ten years are the direct result of this confusion, and of Acts of Congress in the 1880's and 1890's which, in the eyes of many, unjustly deprived the Tribe of so much upland that the riverbeds, tidelands, and disputed territories became that much more important.

Because of its role in creating the problem, but more importantly because of its trust responsibility to the Puyallup Tribe, it is appropriate for Congress to participate in the solution of the problem. More than half of the cost of the settlement, however, is being financed by state and local governments and private landowners.

2. **Q.** *How does the Federal contribution of this settlement compare with that of other settlements that were previously authorized by Congress?*

A. In the 1980 Maine Settlement, Congress contributed $81,000,000. The state and local governments did not contribute to the settlement. In more recent settlements, the federal and local contributions have been equal, as was the case in the Gay Head Settlement in 1987. In the Puyallup Settlement, the state, local governments, and private parties will contribute 52% of the settlement.

3. **Q.** *Why did the Puyallup Tribe and the community seek a negotiated resolution of their disputes?*

A. The Tribe and local governments have been litigating their disputes for over twenty years. That litigation has bred more litigation. The result has been that land titles have remained uncertain and development by all parties has been hampered.

With strong leadership on both sides, a negotiated settlement seemed a better approach. The cost of continued litigation and continued uncertainty would far outweigh the costs of settlement. The settlement could facilitate practical solutions where litigation could not, such as the fisheries dispute procedures, job training, and land use consultation procedures.

Without resolution of the tribal claims, it is certain that the Puyallup Tribe will continue to pursue its claims through an endless procession of litigation. Currently, a lawsuit over the ownership of a section of tideland in the Port area is before the Federal Court, Puyallup Tribe v. Port of Tacoma and Union Pacific. The basic cost of litigation alone could be substantial to both sides. The cost to the entire community in terms of lost economic development potential, while not easily quantified, would be overwhelming, collectively and individually, to Indians and non-Indians alike.

4. **Q.** *What assurances do we have that the Settlement will put an end to the Puyallup Indian claims once and for all?*

A. Only Congress can redefine tribal land ownership rights. If the settlement is enacted by Congress it will expressly extinguish all of the Puyallup Indian Tribe's land claims, known and unknown, and will expressly define the lands owned by the Tribe and the mechanism for acquiring new lands in trust. It will also redefine the jurisdictional relationship between the Tribe and the non-Indian community.

5. **Q.** *Would we have been better off to fight these claims in court?*

A. No. Treaty Tribes are sovereign under federal law. They are immune from suit. Non-Indian parties cannot sue the Tribe in order to obtain clear title as they might otherwise do with another non-Indian party. The Tribe does not have to defend their claims in court. Therefore, the cloud on the land titles in the Tacoma area resulting from the claims might remain indefinitely. Such a situation would place great hardship on existing property owners who could neither sell their property nor realistically obtain financing to develop it.

In the case of the riverbed claims, the Tribe has already established its ownership of a portion of the former riverbed. Other former riverbed lands which are owned by individuals, businesses, and governments are also at risk.

As for the Tribe, unless they seek to prosecute their claims, they cannot realize any value for them. The Tribe is facing years of litigation before they can enjoy some substantial benefit from even their strongest claims. Therefore, they too have a great deal to gain by agreeing to a settlement.

Both parties recognize that history has demonstrated the courts to be less than satisfactory arbitrators of these disputes. For all the years of litigation between Indians and non-Indians, neither has much to show for their efforts. Moreover, where the courts have "resolved" disputes between Indians and non-Indians, both sides have lost control of the process and been dissatisfied with the results. Here we are recognizing that there are other more effective ways of resolving disputes.

6. **Q.** ***How will the Puyallup Tribal Settlement help the Puget Sound Port Community?***

A. Numerous studies support a strong and continued period of Pacific Rim maritime trade growth. Washington State is well poised to take full advantage of the growth opportunity. Recent studies have forecasted a need for a substantial expansion of Puget Sound Port terminals, including the need for an additional 11 container terminals by year 2005. Expansion of port terminals in several Puget Sound ports will be required if Washington is to maintain its current share of West Coast traffic.

No single port in Washington is capable of meeting the total trade increase estimated for the next decade. Tacoma has become a key port for maintaining the current share of maritime business for Washington State.

7. **Q.** ***How will the Settlement help private business?***

A. Land titles will be cleared in the industrial heart of Pierce County, ending a region-wide problem of obtaining clear property title. Property transactions will allow new businesses to come into Pierce County's largest industrially zoned area, the Tacoma Tideflats. In addition, new industrial and distribution opportunities will occur from the spin-off of increased port development.

8. **Q.** ***What role will the Secretary of the Interior and the Interior Department have in implementing this settlement agreement?***

A. The Secretary of the Interior is the federal official primarily charged with exercising the trust responsibility of the United States towards Indian tribes. As such, he has a fiduciary responsibility for Indian lands and the funds on all Indian reservations. He of course has those current duties on the Puyallup reservation. The Secretary will assume no additional duties in this settlement. However, we believe the Secretary can be even more effective in managing the Tribe's holdings because of this settlement.

HISTORY OF LITIGATION

I. The Puyallup Reservation began with controversy.

A. The Reservation was established by the Treaty of Medicine Creek in 1854, but no specific boundaries were set.

B. The original boundaries submitted to the President by Isaac Stevens, contrary to the promises given the Puyallups, did not include the Puyallup River but were in an area of what is now downtown Tacoma with poor access to Commencement Bay.

C. Members of the Tribe went to war because the Reservation was unsatisfactory and not what had been promised them.

D. The war ended with the Fox Island Conference, at which the Tribe was promised a large Reservation at the mouth of the Puyallup which would make them happy.

E. The new (or expanded) Reservation was established by Executive Order of January 20, 1857, but the first survey created two controversies:

1. The surveyor described a smaller inland area than the Puyallups understood they were to have.

2. The Reservation extended to the uplands on both sides of Commencement Bay surrounding the mouth of the river, but the surveyor drew a straight line from one point to the other including some tidelands and excluding others.

II. Problems after the Civil War and the 1873 Executive Order.

A. After the Civil War, settlers began to increase and interfere with Tribal use of the Tidelands.

B. Superintendent Milroy strongly supported Tribal ownership of the Tidelands, but was concerned about uprooting non-Indians who had staked claims.

C. On Milroy's recommendation, but less generously than Milroy recommended, a new Executive Order was issued (September 6, 1873) "extending" the Reservation to include all of Section 34 not already in the Reservation.

1. In context, this order included a full square mile - about 7/8ths of which was tidelands.

2. The intent was disputed and a problem with non-Indians using tidelands remained.

III. The railroads choose Tacoma as their western terminus. The Reservation is in the way.

A. The railroads wanted to run through the Reservation to wharfs in Tacoma.

1. Allotment of Reservation with short trust periods - sale of "surplus" land.

2. Most land lost in tax sales and to judgment creditors.

3. Ashton Case brought and courts declare Tribe does not own a portion of tidelands.
   a) Appealed to Supreme Court.
   b) Ashton Judge impeached by House of Representatives and resigns.
   c) Relationship between Ashton and Judge exposed.
   d) Precedential value of case questioned.

4. By 1920s Tribe had been stripped of almost all of its land (a cemetery remained) and was ignored by local and national governn.ent.

IV. Reorganization under Indian Reorganization Act.

A. One of the first tribes to reorganize.

B. One purpose of act was to save tribes like the Puyallup and let them regain trust land.

V. Litigation to restore the Tribe begins in the 1960s.

A. The fishing rights cases are Puyallup I, Puyallup II, Puyallup III and the Boldt decision

B. Continued existence of Tribe and Reservation. U. S. v. Washington.

C. Right of Secretary to receive property in trust for individual members of Tribe. City of Tacoma v. Andrus, 457 F. Supp. 342 (D.D.C. 1978).

D. Right of Tribe to be free of City regulations of trust property. City of Tacoma v. Andrus.

E. Injunction of construction in Port of Tacoma where it impacted fishery. Puyallup Tribe v. Alexander.

F. Return of Ownership of Cushman Hospital to United States in Trust for Tribe. State of Washington v. Puyallup Tribe.

G. The Riverbed Case, Puyallup Tribe v. Port of Tacoma. 717 F.2d. 1251 (9th Cir. 1983).

VI. Pending and near-term litigation - if settlement is not approved by Congress.

A. The Tidelands Case. Puyallup Tribe v. Union Pacific Railroad. No. C84-359(T)C.

1. Asserts right to tidelands within Section 34 not expressly adjudicated in Ashton, including part of Sea-Land's terminal.

2. Issues:

a) Intent of 1873 Executive Order.

b) Collateral estoppel effect of Ashton.

1) Corrupt decision.

2) Different lands.

B. Suits to evict persons occupying former Riverbed.

1. Riverbed suit covered only small area of land.

2. There are a large number of similar tracts.

C. Injunction of Milwaukee Waterway dredge and fill.

1. Effect on fishery.

2. Environmental statutes.

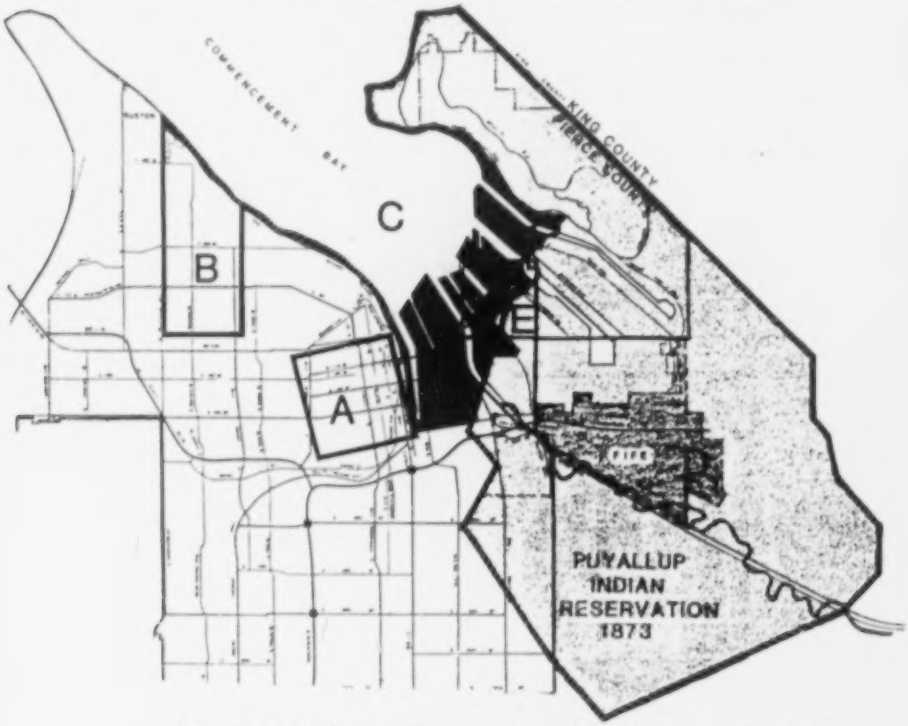
3. Agreement with Port as part of first Sea-Land agreement.

D. Rights-of-Way.

1. Numerous crossings of riverbed by railroads and utilities.

2. Some rights-of-way by United States - others by State.

LAND AND JURISDICTION CLAIMS MAP



The Puyallup Tribe of Indians has ownership claims against the following lands:

A. INTENDED TREATY RESERVE 1854

Two square miles of land in downtown Tacoma intended as the Puyallup Indian Reservation under the Treaty of Medicine Creek.

B. INITIAL SURVEYED TREATY RESERVE 1855

Two square miles of land in the North end of Tacoma surveyed as the first Puyallup Indian Reservation.

C. TIDELANDS 1857

The tidelands abutting the intended and initial treaty reserves and the Puyallup Indian Reservation established by Executive order in 1857.

D. RIVERBED LANDS 1873

Lands within the 1857 Reservation which were part of the Puyallup Riverbed at the time of the Reservation Survey of 1873.

E. SECTION 34 TIDELANDS 1873

The Tidelands which abutted Section 34 at the time of the Executive Order of 1873. The Reservation surveyed in 1873 is over 28 square miles.

For more information on the Puyallup Settlement Agreement, please contact:

Congressman Norm Dicks
202/225-5916
206/593-6536

TESTIMONY OF HARRY R. SACHSE, ATTORNEY FOR
THE PUYALLUP TRIBE OF INDIANS
before the Select Committee on Indian Affairs
United States Senate

Mr. Chairman and members of the Committee, I am Harry R. Sachse, one of the attorneys for the Puyallup Tribe of Indians. I appreciate the opportunity to testify before you today and to urge passage of S.402, The Puyallup Settlement Act.

The Puyallup Indian Tribe is one of the northwest coast salmon fishing tribes. They have always lived at the mouth of the Puyallup River, which is sacred to them.

The Tribe's rights were guaranteed by the United States in the Treaty of Medicine Creek in 1854. The Treaty, as many did, provided that a suitable Reservation would be established for the Tribe. The original Reservation provided, however, was not suitable. It was not on the Puyallup River or its tidal flats, which the Indians relied upon for survival. And it was too small. The situation was so bad that the Tribe went to war. At a conference on Fox Island with Territorial Governor Stevens, an enlarged Reservation was agreed to including the mouth of the

Puyallup River and tidal flats. It was affirmed by Executive Order in 1857. But the survey of the Reservation, apparently, done by a drunk surveyor, excluded most of the tidal flats and included far less total land than the Tribe expected.

Later, non-Indians began to exclude the Indians from the tidal flats, and after considerable effort on the part of the local Indian agent a second Executive Order was issued, in 1873, which, as a compromise, added to the Reservation all the tidal flats in one square mile (Section 34) not already included in the Reservation.

Had the 1873 Executive order been honored, it might have been the end of the problem, though it would have given the Puyallups less than they had been promised. But, the Puyallup Tribe had the fortune and misfortune to live at the future site of the western terminus of the Northern Pacific Railroad, the City of Tacoma, and the Port of Tacoma. And conflicts were inevitable.

The Tribe's Reservation boundaries today include portions of the City of Tacoma. The Port of Tacoma is built on the disputed tidelands of the Reservation, including Section 34. The Puyallup River and the waters of the Port are within the

Tribe's customary fishing grounds. The Railroad rights-of-way leading to the Port cross the Reservation and the River.

The first result of the conflict between tribal and local needs was that the Tribe and its people, one way or the other, were deprived of most of the land assured them by treaty.

The loss of tribal land came about, as a result of various federal actions. In 1886 Congress passed a law at the request of local business interests allotting tribal lands and after a short time ending the trust status of most of the land on the Reservation. This was done at a time when it was obvious that neither the Tribe nor its members had the sophistication to manage their own property. Land was lost through foreclosure or tax sale. The wonder is that all the land was not lost. Then in the 1890's Congress established a commission which ordered other Puyallup lands to be sold to create additions to the City of Tacoma. Simultaneously, tidelands claimed by the Tribe were patented by the State to non-Indians. In Ashton v. United States, a collusive suit brought in federal court, the patents were upheld. The judge was later impeached by the House of Representatives and resigned before the impeachment proceedings were completed. Those proceedings showed that Ashton, who had

the patents, was a business partner of the judge and later set up a trust fund for the judge's family.

As a result of all these actions, racist and unfair, the Tribe became an underclass, not participating in the economic growth of the area that had once been its own. The people of the Tribe were left with a strong and justified sense of the injustice done them.

A turn for the better began when Congress passed the Indian Reorganization Act in 1934. The plight of tribes such as the Puyallup was one of the reasons for the Act, which stopped the loss of land and authorized the Secretary of the Interior to take new lands in trust for tribes or individual Indians inside or outside Reservation boundaries. The Puyallup Tribe was one of the first to reorganize and adopt a modern constitution under the Act.

In the past twenty-five years the Tribe has had considerable success in gaining recognition of its treaty rights and in restoring portions of its lost lands. In three United States Supreme Court cases, Puyallup Tribe v. Department of Game, 391 U.S. 392 (1968); Department of Game v. Puyallup Tribe, 414 U.S. 44 (1973); Puyallup Tribe v. Department of Game, 433 U.S.

165 (1977); as well as in the "Boldt" decisions (Aff'd. Washington v. Fishing Vessel Ass'n., 443 U.S. 658 (1979), the Tribe's fishing rights in the Port of Tacoma and in the Puyallup River were recognized. A decision of the Ninth Circuit United States v. State of Washington, 496 F.2d 620 (1974) cert. denied, 419 U.S. 1032 (1974) upheld the continued existence of the Tribe and its Reservation against challenges by the State. A federal district court in the District of Columbia recognized the Secretary of the Interior's right to take land in trust for the Tribe and its members, and the independence of tribal land from local regulation. City of Tacoma v. Andrus, 457 F. Supp. 342 (1978). Federal courts in the District of Columbia and in Tacoma have also enjoined construction in the Port of Tacoma where tribal fisheries were threatened. A tribal sit-in at Cushman Hospital resulted in a federal court decision affirming the tribal ownership of the hospital and its grounds.

More recently, the Tribe asserted and won ownership of a portion of the now dry former riverbed of the Puyallup River, putting ownership of substantial other parts of now exposed riverbed at issue. Puyallup Tribe v. Port of Tacoma, 525 F. Supp. 65 (W.D. Wash, 1981). Aff'd. Port of Tacoma v. Puyallup Tribe, 717 F.2d 1251 (9th Cir. 1983), cert. denied, 465 U.S. 1049 reh. denied, 466 U.S. 954 (1984). Those lands are currently

occupied by non-Indians up and down the river. The Tribe's claim to ownership of a portion of the Port of Tacoma is presently pending in the United States District Court for the Western District of Washington. The Tribe's claim to ownership of a portion of downtown Tacoma, as a result of changes in the Reservation boundaries shortly after the first Reservation was laid out, have not been litigated. The injustices done to the Tribe has fueled the litigation and the Tribe's success in litigation.

This continuous litigation has been costly to the Tribe, the United States, the State and local communities. It has also impeded development by any of the parties.

In August of 1984 the Tribal Council approached the local governments about a broad scale settlement. The local governments welcomed the overture, and settlement talks began.

The settlement process has been arduous. A first agreement, accepted by the local governments and the Tribal Council, was rejected by a vote of the people of the Tribe. Litigation then resumed and planned construction in the Port was halted. A second round of settlement negotiations was then begun, building on the agreements worked out in the first, but

tailoring the settlement more closely to the needs of the Tribe, State and local governments.

This settlement would probably also have failed except for the intervention and diplomacy of Senator Inouye and Representative Dicks. Additionally, the State of Washington, which had not participated in the first round, agreed to become a party to the settlement and to make a substantial financial contribution to add to those made by the Port, local governments, local land owners, and insurers.

The new settlement agreement has now been approved by the Tribe and the local governments. Governor Gardner has endorsed it, and an appropriation is expected from the State Legislature. The settlement is a good resolution of difficult issues. It lets the Tribe participate in the economic growth of the community, provides mechanisms for resolving disputes, and should lead to a better and more just future for the Tribe, the Port, and the City.

The outline of the settlement is as follows:

The Tribe gives up all of its unresolved claims to land and tidelands, which are considerable, but its ownership in

trust of listed lands including the lands transferred by the settlement is recognized. The settlement lands include the current riverbed within certain boundaries and an estimated 899 acres of land valued at approximately $37,460,000. This land includes waterfront land in the Port of Tacoma and approximately 600 acres of open space, forrest, and cultural lands, to be purchased and put into trust. This provides the Tribe opportunities for maintenance of its culture and also opportunities for economic development, with interests similar to those of the Port, rather than inimical to it.

The Tribe's right to purchase additional lands to be held in trust for it by the United States under the same laws and regulations, as applied to other Indian tribes is guaranteed. Consultation with local governments about providing services, and about land use are included.

The Tribe approves a number of major construction projects in the Port of Tacoma with agreed to fishery mitigation and enhancement measures. A procedure for binding arbitration as to mitigation and enhancement measures is established for future construction projects within the Port.

The Tribe's jurisdiction, except as to fisheries, is largely restricted to trust land and the local governments' to fee lands, with various procedures established for consultation. Reservation boundaries are unaffected by the settlement.

A trust fund of $24,000,000 is established to make a one-time per capita payment to each tribal member over twenty-one and to each child as he becomes twenty-one.

A permanent trust fund of $22,000,000 is established, the income from which is to be used to provide social services to the members of the Tribe.

A program of fishery enhancement is undertaken, largely paid for by the State of Washington and the Port of Tacoma.

The State undertakes a job training program for Puyallup Indians.

The Tribe will receive $9,500,000 for economic development and to make future purchases of land.

$2,000,000 is provided to aid businesses by tribal members.

The Blair Navigation Project, already authorized by Congress, is to be funded. This project provides for upgrading a portion of the Port, including the port lands the Tribe will receive.

Except as specifically modified, the Tribe retains all of its rights of sovereignty and its rights under the Treaty of Medicine Creek.

The proposed funding for the settlement is approximately 48% federal and 52% state, local and private.

Mr. Chairman, in light of the federal trust responsibility towards the Puyallup Indians, the major injustice and causes of poverty that are being righted, the federal involvement in depriving the Tribe of much of its land, and the considerable effort of the Tribe and local parties to settle their differences in a constructive way, we urge your support for the Puyallup Settlement Act.

This concludes my testimony for today. I want to thank you and the Committee for the privilege of appearing before you. I would be glad to answer any questions you may have.

PREPARED STATEMENT OF JAMES WALDO, COUNSEL AND CHIEF NEGOTIATOR
REPRESENTING NON-TRIBAL PARTIES TO THE SETTLEMENT
SEATTLE, WASHINGTON

It is a pleasure and an honor to be able to testify before this committee on the proposed Puyallup settlement. Before discussing the merits and benefits of the settlement, I would like to provide the committee with a brief historical background of these controversies, which go back to the mid-1800's.

On March 2, 1853, Washington became a territory of the United States. A young army officer, Isaac Ingalls Stevens, was appointed to serve both as Governor and Superintendent of Indian Affairs in the new territory. When he arrived on Puget Sound, Stevens accomplished a number of things: he conducted a census, selected a capital, and wrote treaties with various Indian Tribes and bands, in attempting to settle the territory.

In the winter of 1854, Stevens gathered all the tribes, bands, and groups of Indians he could on the banks of a small creek near the mouth of the Nisqually River to develop a treaty. Stevens claimed representation from most of the tribes of the Puget Sound lowlands, and, after several days of negotiations, a treaty was written. On December 26, 1954, the Treaty of Medicine

Creek, ceding the territory of the Nisquallys, Squaxins, and the Puyallups, was signed. The Treaty provided to the Puyallup Tribe a Reservation consisting of two sections of land on the south side of Commencement Bay. Subsequent actions through Executive Orders in 1857 and 1873 created a more acceptable Reservation and also to create railroad rights-of-way. In addition, Federal policy through legislative actions, including the General Allotment Act of 1887, the Puyallup Indian Commissions at 1890-1892, the Puyallup Allotment Act of 1893, the Indian Reservation Act of 1934, as well as various court cases, influenced the course of events leading to the difficult situation confronting us today. (See Historical Summary, Attachment #1.)

The federal government, through actions of commission and omission, has played a significant role in creating and maintaining these controversies. For example, Congress created the First Puyallup Commission in 1890 to assess whether the tidelands belonged to the Tribe. This was in the year after statehood and raised an issue about whether the normal conveyance of tidelands to the State of Washington had occurred. The Commission found the tidelands had been conveyed to the State, but Congress never accepted or acted on the report. Thus, the issue has been left up in the air.

Specific questions of ownership of the tidelands within Commencement Bay and portions of the former Puyallup Riverbed, as well as the extent of the Puyallup Indian Reservation, were unresolved. In addition, there are many current and potential jurisdictional conflicts, all of which affect local governments, the Tribe and its members, private property owners, business and industry and the community at large in the Tacoma- Pierce County area. The federal government is at the source of each of the major disputed claims of land ownership. Since the signing of the Treaty over 130 years ago, Congress and the Executive Branch on numerous occasions in the late 1880's and early 1900's had the opportunity through legislation, executive action, or judicial proceedings to clarify these claims, and failed to do so.

The Federal Government has largely determined the relationship of the Tacoma-Pierce County community with the Puyallup Tribe. During the period of 1853 to the mid-1930's, Federal policy can be characterized as an effort to assimilate Indians into non-Indian society and to terminate Indian Reservations. From the period of the mid-1930's to the early 1950's, Federal policy was designed to strengthen Tribal government and preserve Indian Reservations. During the period of the early 1950's to the mid-1960's, assimilation was again the key

focus of Federal policy, including the termination of Indian Reservations. Finally, from the 1960's to the present, strengthening Tribal self-government and preserving Indian Reservations is again the focus of Federal policy. Congress and the Executive Branch have recently codified this approach by granting to Tribes jurisdiction over reservations for purposes of implementing federal clean water and environmental cleanup programs.

More recently, the relationship of the Puyallup Indian Tribe to the surrounding community has been largely defined through judicial proceedings. Court action involving the Tribe's fishing rights has brought considerable attention to the Tribe and some recognition that many issues remain unresolved. Puyallup Tribe v. Department of Game (1968) (Puyallup I); Washington Game Department v. Puyallup Tribe (1973) (Puyallup II); United States v. Washington (1974); also Puyallup Tribe v. Washington Game Department (1977) (Puyallup III). Further court cases such as City of Tacoma v. Andrus (1978) concerning the creation of trust land and the most recent decision by the Ninth Circuit which upheld the Tribe's title to former Puyallup Riverbed land, Puyallup Tribe of Indians v. Port of Tacoma (February 1984), exacerbated a climate of uncertainty and growing

concern by local governments and private property owners regarding unresolved land claims and jurisdictional disputes. Other recent events, such as seizure and ultimate return of the state's Cascadia Juvenile Testing and Diagnostic Center to the Tribe after a bitter confrontation, the SeaLand negotiation and agreement between the Port of Tacoma and the Tribe, and the Tribe's letters to owners of Riverbed properties which claimed ownership by the Tribe, created a political and social environment for addressing those issues.

IMPORTANCE OF THE PROPOSED AGREEMENT

In this particular case, the climate for negotiations was advantageous due to community and Tribal leadership, and an immediate need by the Tribe and the Non-Indian community to have certainty for economic growth, housing, fisheries and more opportunities for all the participants in this process. In addition to the other factors considered, a negotiated agreement provided a way to save court costs, and, more importantly, a way to avoid harsh conflicts that could result from prolonged, expensive, and probably bitter court battles.

Failure to resolve the Puyallup land and jurisdictional claims in a timely manner will cause severe economic

impacts on the communities of Tacoma, Fife, Puyallup, Milton, Pierce County, the Port of Tacoma, the State of Washington, as well as private property owners and the Tribe and its members. Without resolution, it was certain that the Puyallup Tribe would continue to pursue claims through an endless procession of litigation. It was equally certain that their claims would be vigorously resisted. Currently, a lawsuit over the ownership of portions of Section 34, former tidelands in the Port area, is before the Federal Court, Puyallup Tribe v. Port of Tacoma and Union Pacific. The basic cost of litigation alone would be substantial to both sides. The cost to the community in terms of lost economic development potential, while not easily quantified, would be overwhelming for Indians and non-Indians alike.

Exceptions to title policies would continue to make land sales difficult, if not impossible. Financing of public and private improvement projects could be severely threatened by the inability to sell bonds or obtain financing, or significantly higher costs to do so.

Land values would suffer; new industry would avoid the Tacoma area because of these problems; employment would suffer; and consequently, the economic development potential of all of the various jurisdictions would be

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severely and negatively impacted. The full untapped development potential of the port area would not be realized for a long period of time.

Tacoma and its port have been likened to a sleeping giant, which only recently has shown signs of realising its full potential. The location of the SeaLand, Maersk, and K-Line shipping companies in Tacoma has energized a long-awaited momentum in the Tacoma economy.

The Tacoma harbor is one of the five deepest and finest natural harbors in the world. [With this growth, the Port of Tacoma will become] the sixth largest port for container shipping in the United States and will place among the top 20 in the world. The effects of failure to conclude a Settlement would be felt by the Port in a greatly reduced ability to sell bonds or finance major capital improvements; undertake construction projects which in any way may affect the fisheries; attract new customers because of the lack of financing; and to maintain current operations or expand existing facilities.

Most of the major development is occurring in the heart of the area of disputed lands. If land claims were pursued through litigation, it would inevitably delay

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the full expansion and operation of the intermodal rail transfer yard. It would threaten the future of other transportation and utility systems which are located on disputed property.

To the extent that the Tribe might be successful in its claims, the tax and revenue base of the Port of Tacoma and the Cities of Fife, Tacoma, Puyallup, and the County of Pierce would be significantly reduced, greatly impairing the provision of public facilities and services. To the extent the Tribe might not be successful, it would have almost no tax base to provide services for its members.

Basic human and social relations between Indians and non-Indians, community and individual, which have been difficult to say the least, would suffer even greater strain and cost.

The Puyallup Tribe has been affected by these large unresolved issues. The questions surrounding ownership of land have prevented the Tribe from establishing a significant land base for economic development, housing, open space and recreational purposes. This has resulted in a lack of Tribal businesses, few employment opportunities for Tribal members, insufficient housing and

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not enough revenues to effectively provide necessary Tribal governmental services such as health, education and care for their elders.

Without a negotiated Settlement the Tribe would be left with only one avenue to obtain resources: a long series of court cases. Many of the benefits in the proposed Settlement for Tribal members could not be obtained through litigation.

The cumulative negative impact of all of these concerns would be devastating to the community, to Indians and non-Indians alike. Neither side can afford these costs.

In addition to resolving the above concerns, a negotiated Settlement would provide an opportunity for peaceful cooperation of the entire economic and social community. The time has come, and it is, in fact, long overdue, to address this situation. A negotiated Settlement as to future governmental jurisdiction, fishing issues, and land ownership will lead to a peaceful, cooperative, and mutually respectful co-existence and cooperation between Indians and non-Indians as a community, once and for all time. The future opportunities for the Tribal government and its members, the federal government, the local governments, the State of

Washington and the citizens are far greater through a negotiated Settlement than piecemeal litigation and confrontation.

ESTABLISHMENT OF NEGOTIATIONS

In April 1984, the Puyallup Tribe wrote to representatives of the local governments in Pierce County, the private sector, and Congressman Dicks to suggest an out-of-court resolution of the dispute over title to the remaining non-litigated former Puyallup Riverbed lands. The Tribe indicated they would be willing to look at proposals for resolving the issues. After several meetings, the representatives of the local governments and Congressman Dicks responded by suggesting a comprehensive Settlement through negotiations.

The Tribe accepted this approach and had in place an existing Negotiating Team and structure for such matters.

The non-Indian representatives of private businesses, local governments, and private property owners formed a coalition to organize their efforts for negotiations. They called themselves the Steering Committee for the Puyallup Indian Negotiations. An overall purpose, as

well as goals and objectives, was established. Those are set forth as follows:

OVERALL PURPOSE

On behalf of the City of Tacoma, Port of Tacoma, the County of Pierce, the City of Puyallup, the City of Fife, Commencement Bay Tidelands Owners Committee, and other parties directly affected, it is the intent of the aforementioned parties to achieve collectively a non-judicial settlement of land claims with the Puyallup Tribe of Indians and further to provide assistance to related issues regarding the development and implementation of an overall Fisheries Plan for the Puyallup Tribe and non-Indian sports and commercial fishing industries, and development and implementation of a business/economic development strategy for the Puyallup Tribe, and the resolution of jurisdictional/regulatory issues between the Puyallup Tribe, municipal corporations, and Pierce County.

It is the intent of each party to adhere to the following goals and objectives:

GOALS

To provide for a fair and equitable negotiations process which also allows the discussion of collective solutions as well as independent resolution of specific issues.

To provide a reasonable share of resources to support the process of the negotiated Settlement.

To ensure the negotiations are carried on in a manner which recognizes the local decision capacity and authority of local private landowners and local governments.

To begin the negotiations immediately and conclude the negotiations as soon as possible. If additional time is necessary, a decision will be made collectively by the parties.

To solve and reach agreement on as many issues as possible.

To strongly encourage the participation of the United States Government in resolution of these issues."

In addition, the Steering Committee selected a Negotiation Team consisting of a lead negotiator, Jim Waldo, one member from the private sector, and one member from the public sector, and their alternates. The Executive Branch of the Federal Government participated through representatives designated by the Secretary of the Interior.

The negotiations began in late August of 1984. (See Attachment #2 - Chronology of Recent Events.) The first negotiation sessions were devoted to organizing the framework and guidelines for negotiations, as well as the identification of issues. The Puyallup Tribe expressed its willingness to consider relinquishing its claims to some or all of the land in return for a Settlement package which included a land base, economic development programs, employment opportunities for Tribal members, and fisheries enhancement. The non-Indian negotiating team, in addition, believed that jurisdictional disputes should be discussed and resolved to the extent possible. These goals became the framework for the Settlement Agreement.

The negotiating teams divided the matters to be discussed into four general subject areas: land and land claims; fisheries enhancement; jurisdiction; and eco-

nomic development. The following is a summary of the categories:

Land Claims included disputes over ownership in the Commencement Bay tideland areas, former Puyallup Riverbed, treaty Reservation or the intended Reservation, and railroad, other rights-of-way through the Reservation, and other claims. This general category also included discussion of what types of land the Tribe would receive as part of an overall Settlement.

Fisheries Enhancement included two elements. First, the Port and private businesses desired to construct projects which could impact the fisheries resource and habitat. The Tribe culturally and legally has a commitment to protect the fishery resource. Both negotiation teams decided it would be worthwhile to attempt to establish a process for measuring those impacts and to determine what mitigation and enhancement would be implemented to offset any negative impacts to the fisheries resource. Second, both parties believed that it would be beneficial to include measures to enhance the fisheries resource which would benefit Indians and non-Indians alike.

Jurisdiction included resolving current disputes in law enforcement and navigation, and broader questions of authority and control in the areas of land use, taxation, business regulation, zoning, and building codes. The intent of both parties was to establish procedures or inter-governmental agreements to resolve existing disputes, and to resolve as many of the broader jurisdictional questions as possible by removing uncertainties through substantive provisions for responsibility and authority in the future. These provisions would include who will have governmental authority over trust lands and non-trust lands within and outside of the 1873 reservation boundaries.

Economic Development included the Tribe's desire to establish sound income-producing programs to ensure the Tribe's financial well-being and self-sufficiency. Also under this category were employment opportunities and training for Tribal members, income for Tribal members, Tribal enterprises/businesses, and resources to meet housing and social service needs of Tribal members.

Initially, technical teams of Indian and non-Indian experts were selected for each of the four categories. The technical teams were given the task of identifying all of the issues as they relate to the Tribe and non-Indian community. They were then asked to provide different alternatives for resolving the issues, which would then be discussed and negotiated by the negotiation teams.

Negotiating sessions were conducted at least weekly in day-long sessions and, in many instances, two or three sessions were not unusual. In addition, at least a hundred people were involved with the technical team process, accounting for several thousands of hours of time and effort.

The first agreement was worked on from August of 1984 to September of 1985. The negotiations required thousands of hours (with sessions lasting ten to fifteen hours per day) and at a cost of thousands of dollars on both sides. Proposals were made, authorized, rejected, refined, discarded, exhumed and modified.

Finally an Agreement-in-Principle was reached during a two day round-the-clock session September 3-5, 1985.

The Agreement-in-Principle was ratified by the Tribal Council, the participating local governments and the private property owners in October. The State of Washington was not a party to the Agreement.

Detailed documents were drafted implementing each of the key provisions of the Agreement-in-Principle.

These documents were mailed to all Tribal members. Congressional and Executive Branch officials were briefed on the package.

On February 8, 1986, the Puyallup Tribal members voted down the proposed settlement.

In April of 1986, a Tribal referendum calling for a new settlement package was certified as having a sufficient number of Tribal signatures.

There ensued a period of turmoil within the Tribe, with Council elections, recalls and further elections.

In early 1987, Senator Inouye met with the Tribal Council and the Non-Indian Steering Committee to encourage further efforts.

The State Legislature passed a bill appropriating $4 million to settle the former riverbed claims. In July of 1987, the Port and Tribe reached agreement on certain development projects.

By September, the Port and Tribe had failed to reach agreement on additional development projects and the effort at piecemeal negotiations was over. The stay was lifted from the litigation on the former tidelands. From September to mid-October, it appeared that the issues were headed back to the courts.

In mid-October 1987, Senator Inouye, Senator Evans, Congressman Dicks and Governor Gardner all urged one last attempt at a negotiated settlement.

There was another recall and election of several new Tribal Council members.

In February of 1988, the Tribe requested a three month stay of the court proceedings to permit one final attempt at negotiating a resolution to the claims.

In April and May, offers of settlement were exchanged. In June the effort almost collapsed with one of the local government's rejection of the proposed offer.

Congressman Dicks and Senators Inouye, Evans, and Adams once again urged all parties to give this effort one last try.

In the first two weeks in July, agreement was reached between representatives on both sides on the proposed agreement which would be submitted to the Tribal members and, if satisfied, would be submitted to the local governments, private property owners, and the state and federal governments for approval and action.

On August 27, 1988, the Agreement was approved by the Puyallup Tribe with a 66% affirmative vote.

An extraordinary effort in time and resources was expended by the Tribe, the federal, state and local governments and the private sector in reaching a negotiated Settlement. Hundreds of thousands of dollars have been expended in support of the negotiation process. In addition, several hundreds of thousands of dollars of staff time and agency resources have been provided to support the negotiation process.

The Agreement will: resolve all areas of dispute regarding land claims, including the tideland area of Commencement Bay for private property owners, the City

of Tacoma, and the Port of Tacoma; resolve the dispute regarding the Tribe's claim to an intended Reservation in the area of downtown Tacoma or North Tacoma; resolve claims by the Tribe against former riverbed lands. It also resolves major jurisdictional conflicts (both current and potential) and provides a dispute mechanism for fisheries development issues. It provides for inter-governmental cooperation on law enforcement, land use issues and fishing issues.

WHO BENEFITS?

Clearly, the beneficiaries of the proposed Agreement will include members of the Puyallup Tribe, the members of the community at large in the Tacoma-Pierce County area, the State of Washington and the federal government.

This Agreement provides a foundation for a partnership for the future between Indians and non-Indian parties, and the certainty necessary for long-term economic growth. This Agreement is an investment in the future. It will provide the resources and opportunity for the Puyallup Tribe to become a positive major economic force in the county within a framework that will allow for a cooperative future between the Tribal government and other governments (federal, state and local).

The Tribe and its members will receive a substantial land base, millions of dollars for economic development, and support for a foreign trade zone. The fisheries concerns of the Tribe are addressed in Commencement Bay and the Puyallup River. The Tribal fisheries program will receive millions of dollars for enhancement and research. Tribal members will have the opportunity for job training, for jobs,and to start new businesses. Many of the Tribal members are in their late teens and will benefit from these career opportunities. The Tribe will have a revenue base through a permanent trust fund and future income from the land and business opportunities which will allow it to take care of its other members and pursue other Tribal priorities.

Further, this Agreement will avoid years of protracted litigation of land claims and disputes over governmental authority and taxation. This Agreement will provide all parties the necessary certainty and the avoidance of major conflicts in order to conduct their affairs in the most advantageous manner.

The Port of Tacoma and private businesses which are crucial to the economic future of Pierce County and the State will be able to continue the rapid and successful

expansion that has occurred recently. This will provide increased jobs and economic activity for the entire community.

The region will benefit economically. One provision of this Agreement provides for the Federal government to fund half the cost of a widening of the Blair Waterway which is needed in order to accommodate the next generation of larger container vessels, and which will allow the full potential of Blair Waterway to be developed. This benefits the Port and private business in the Pierce County area, as well as the Puyallup Tribe which will have land for a marine terminal and the ability to participate in future expansion of maritime business on the Waterway. This development of the Blair fits with the federal government's goal of making us more competitive in the world economy.

This Agreement also provides for improvement of the salmon and steelhead fisheries resource in the Puyallup River and Commencement Bay. This is an important community resource to both Tribal members and non-Indian sports and commercial fishermen. The Settlement will provide significant resources to the Puyallup Tribe and State agencies to pursue important projects such as new and upgraded hatcheries, net pens, a spawning channel,

and other measures for improving the fisheries habitat and resources. When these new resources are combined with other State and Federal programs, improvements to the existing facilities in the River basin and the new U.S./Canada Salmon Treaty, there should be a significant increase in the salmon fishery in this area. This program helps implement the federal goals under the U.S.-Canada Salmon Treaty of expanding fisheries production and having the benefits go to the country of origin.

The local governments are committed to working with the Tribe to help maximize this fishing opportunity for the benefit of everyone living in the area, while providing for future development and critical flood control measures.

This Agreement also establishes a long-term certainty and stability in the area of governmental regulations. It provides that the Puyallup Tribe will not assert any authority it may have over non-Indians on fee lands to levy taxes or to regulate zoning, building and safety codes, or other such governmental or police powers, but will leave such regulation to the local and state governments. The Tribe will have control of trust lands and the activities conducted thereon, subject to federal

law. The Settlement establishes a series of mediation and consultation mechanisms to be utilized in land use conflicts between the Tribe and local governments.

There will also be agreements on intergovernmental law enforcement cooperation, agreement on how to reduce the conflicts between ship traffic and Tribal fishing, and a mechanism for resolving questions or disputes regarding future development and its impacts on fisheries. This section of the agreement provides a workable framework to implement the federal policy of government to government relations in this unique setting.

The following represents a summary of benefits to each of the parties:

Summary of benefits to the Tribe:

1. Land base
2. Business opportunities
3. Jobs for Tribal members
4. Fisheries enhancement and mitigation process
5. Resources for governmental services
6. Economic opportunity for long-term self-sufficiency
7. Recognition and inclusion of the Tribe as a partner in the community
8. Tribe's increased ability to positively influence community's development
9. Blair Navigation Project
10. No court litigation

Summary of benefits to the local governments and private sector:

1. Clear title to lands in dispute
2. No trespass or back rent on claims
3. No court litigation
4. Removal of jurisdictional cloud
5. Certainty and process for land use and trust land issues
6. Fisheries mitigation process
7. Fisheries enhancement
8. Resources of settlement are an investment in community
9. Blair Navigation Project
10. Flood control

In summary, there are several major benefits in the Agreement which are consistent with current public policy: the Agreement is based upon negotiation rather than litigation and is an essential building block for cooperation in the future; a partnership is established between the Tribe, Federal Government, state and local governments, business community, and the community at large now and for the future to solve issues; the enhancement of the fisheries resource and its habitat; the protection of the environment balanced with the need for economic development; and a set of economic opportunities and choices from which the Puyallup Tribe can make substantial progress toward self-sufficiency while removing barriers to economic growth for local businesses, the community, and its port.

The Agreement attempts to bridge the troubled waters of past actions, and the turbulence created by recent and potential litigation, with a partnership and investment in the future. The Agreement is not an attempt to determine who wins and who loses, but rather provides a blueprint for all affected parties to move ahead together in the future.

This agreement is fair to all parties, is a good investment for all parties, and, in addition to resolving certain disputes, futhers a number of important federal policies related to tribes, exports and trade development, and environmental and fisheries protection and enhancement.

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BRIEF HISTORICAL SUMMARY
PUYALLUP TRIBAL CLAIMS

1854 - 1984

1854 Treaty of Medicine Creek -- December 26, 1854.

1855 March 3, 1855, Treaty of Medicine Creek ratified by Senate. April 10, President affirms.

1856 Indian War.

1857 Executive Order of 1857 creating Puyallup Indian Reservation.

1871 Congressional Act of March 3, 1871: Indian treaty making was abandoned.

1873 September 6, 1873, President Grant signs Executive Order ". . . it is hereby ordered that the Puyallup Reservation in Washington Territory be so extended as to include within its limits all that portion of Section 34, Township 21 North, Range 3 East, not already included within the reservation."

1881 Certificate of Allotment issued to Puyallup Indian homesteads on reservation.

1889 The Washington Enabling Act passes Congress and is signed February 22. The Enabling Act calls for a harbor line commission to define harbor lines and navigable bodies of water; the State asserts ownership of tidelands, except those tidelands patented by United States.

1889 November 11, Washington is proclaimed a state by President Harrison.

1890 First Puyallup Commission. The U.S. Senate passes S2912, "A bill providing for a commission to ascertain and report certain facts relating to the Puyallup Indian Reservation in Washington and to determine the northern boundary of the Warm Springs Indian Reservation in Oregon."

1891 March 11, 1891, Report of the Puyallup Indian Commission:

"The reservation does not embrace the land on Puget Sound between high and low water mark. Some allotments are intertidal -- no investigations were made, however."

1893 Second Puyallup Commission created to pursue the sale of allotted lands.

1896 August 26, 1896, Report of Puyallup Indian Commission. Described the problems with attempted sales of allotted lands.

1909 United States of America v. J. M. Ashton; District Court for Tacoma.

1910 United States of America v. J. M. Ashton; U.S. Supreme Court.

1968 Puyallup Tribe v. Department of Game (Puyallup I); U.S. Supreme Court (fishing rights).

1973 Washington Department of Game v. Puyallup Tribe (Puyallup II); U.S. Supreme Court (fishing rights).

1974 U.S. v. Washington; Federal District Court (fishing rights).

1977 Puyallup Tribe v. Washington Department of Game (Puyallup III); U.S. Supreme Court (fishing rights).

1978 City of Tacoma v. Andrus; U.S. Supreme Court (future land in trust and jurisdiction).

1984 Puyuallup Tribe v. Port of Tacoma; Ninth Circuit (title to former river bed land).

NEGOTIATIONS TO DEVELOP PUYALLUP AGREEMENT

CHRONOLOGY OF RECENT EVENTS

July 24, 1981	Judge Tanner decides Puyallup Tribe has title to 12.5 acres of former riverbed. Puyallup Tribe v. Port of Tacoma, U.S. District Court.
August 16, 1983	The Ninth U.S. Circuit Court of Appeals upheld Judge Tanner's decision on Puyallup title to 12 acres of bottomland north of the Old Highway 99 bridge over the Puyallup River.
February 21, 1984	The U.S. Supreme Court denied cert. on the Port of Tacoma's appeal of the Ninth Circuit Court decision.
April 4, 1984	Letter sent from Puyallup Tribe to Congressman Dicks, Mayor Sutherland and others proposing negotiations.
June 13, 1984	Puyallup Tribe filed a quiet title action in U.S. District Court against the Port of Tacoma and United Pacific Railroad asserting Tribal ownership of 170 acres of former tidelands (Section 34). Puyallup Tribe v. Port of Tacoma and Union Pacific Railroad, et al.
July 3, 1984	The Port of Tacoma hired Jim Waldo, an attorney with Gordon, Thomas, Honeywell, to represent the Port of Tacoma in negotiations with the Tribe over disputed land claims.
August 1984	Commencement Bay Tideland Owners Committee filed a motion to intervene in the Puyallup Tribe former tideland lawsuit.

August 17, 1984	The non-Indian negotiating group was formed. Congressman Norm Dicks and Tacoma Mayor Doug Sutherland were instrumental in bringing the group together. Jim Waldo became the lead negotiator for the entire non-Indian negotiating group. Original members of the negotiating group were Mayor Doug Sutherland, Tacoma; Mayor Bob Mi[illegible] Fife; Mayor Don Crone, Puyallup; Booth Gardner, Pierce County Executive; Larry Killeen, Director, Port of Tacoma; Corry McFarland, President, Commencement Bay Tidelands Owners' Committee; Karl Anderson, Secretary-Treasurer, Commencement Bay Tideland Owners' Committee; and Jim Waldo, lead negotiator. The lawsuit was stayed at request of the Tribe and the defendants.
March 1, 1985	The non-Indian negotiating team made a settlement offer to the Puyallup Tribal Council.
March 4-7, 1985	The Puyallup Tribal Council rejected the offer.
August 14, 1985	A proposed settlement was presented to the Tribal Council by the non-Indian negotiating team.
August 15, 1985	Proposed settlement was rejected by the Tribal Council.
September 3-5, 1985	A two-day meeting between the non-Indian and Indian negotiating teams was held. Congressman Norm Dicks was the facilitator.
September 10, 1985	Announcement of agreement-in-principle between Tribal Council and non-Indian negotiators.
October 1, 1985	Tacoma City Council approved the agreement-in-principle.

October 3, 1985	Tacoma Port Commission approved the agreement-in-principle.
October 8, 1985	Puyallup City Council approved the agreement-in-principle.
	Pierce County Council approved the agreement-in-principle.
	City of Fife approved the agreement-in-principle.
October 15, 1985	Puyallup Tribal Council approved the Agreement-in-Principle.
November 1, 1985	Commencement Bay Tideland Owners approved the agreement-in-principle.
February 8, 1986	Members of the Puyallup Tribe voted 236-158 against the proposal. Approximately 600 members were eligible to vote.
February 10, 1986.	The non-Indian Steering Committee decided to keep the settlement offer "on the table" while Tribal Council leaders polled Tribal members to determine the reasons for the negative vote. It was felt by some that the members of the Tribe did not have enough time to study the lengthy agreement.
February 28, 1986	A petition was circulated by some Tribal members asking the Puyallup Tribal Council to work with "interested members of the Tribe to make changes in the proposed negotiated settlement. Those changes should answer concerns that have been expressed by the membership to the [fullest] extent possible." The petition also called "for a referendum vote" on the new proposal.
April 26, 1986	Signatures on the petition calling for a vote on a revised settlement agreement were verified and the necessary 222 were found to be valid. Tribal Chairman Frank Wright, Jr. said a series of hearings on the settlement with Tribal members would be held.

	In a primary election for Tribal Council positions, incumbent Connie McCloud was defeated. The four successful candidates were Bill Sterud, Ramona Bennett, Alison Gottfriedson, and Roleen Hargrove.
June 14, 1986	Puyallup Tribal Council elections were held. Incumbent Bill Sterud and Roleen Hargrove were elected.
June 21, 1986	Frank Wright, Jr. was recalled from the Puyallup Tribal Council by a vote of 118 to 102.
July 26, 1986	A primary election was held for the seat on the Puyallup Tribal Council vacated by the recall of Frank Wright, Jr. 207 votes were cast. Wright received 69 votes, Bertha Turnipseed had 42, and the remaining six candidates had between 9 and 26. The other candidates were Frank Bean, Silas Cross, Sr., Alison Gottfriedson, Connie McCloud, and Nancy Shippentower.
August 15, 1986	John Bell, chief attorney for the Puyallup Tribe for 12 years, resigned to become Executive Director of Puget Sound Legal Assistance Foundation. Bell said he would phase out of his work with the Tribe over six months.
August 23, 1986	Bertha Turnipseed was elected to the Puyallup Tribal Council over former Tribal Chairman Frank Wright, Jr. by a vote of 161 to 132. Bill Sterud was elected Tribal Council Chairman and Roleen Hargrove was elected Vice Chairman.
September 18, 1986	"Puyallup Tribe announced the formation of a 'Port Negotiation Committee", made up of 25 Tribal members, charged with full responsibility for developing a land claims settlement over disputed lands in the Port of Tacoma." (Note: This paragraph is excerpted from a press release from the Puyallup Tribal

Council.) In discussions with Tribal representatives it was learned by members of the Steering Committee that the Tribal Council's preferred method of negotiations would be to deal with individual issues and entities within the community separately.

November 1986 — The Tribal Council asked Congressman Norm Dicks to consider federal participation in a "piecemeal" rather than "comprehensive" settlement approach.

January 1987 — Two bills dealing with the land claims issue were drafted for consideration by the State Legislature. One related to state reinsurance of tidelands and riverbeds; the other had to do with state affirming title to former tidelands and former riverbed.

Representatives of the Port met with the Tribal Council and agreed to open interim discussions on specific Port development projects, with the understanding that any agreement would be consistent with the agreement-in-principle reached in 1985.

February 11, 1987 — Senator Daniel Inouye, Chairman of the Senate Select Committee on Indian Affairs, met with representatives of the Puyallup Tribe and the non-Indian Steering Committee.

Talks between Tribe and Port on the development of Terminal 3 continued.

The Legislative initiative continued; state legislation passed allocating $4 million to be used to settle Puyallup Tribal claims against owners of former Puyallup Riverbed land.

July 23, 1987 — Agreement was reached between the Port and the Tribe allowing development of Terminal 3, extension of the Sea-Land pier, and extension of Pier 7 in exchange for land, cash,

	fisheries enhancement and other considerations.
August 1987	The U.S. District Court ruled against the Suquamish Tribe in a case involving claims of ownership over tidelands similar to the Puyallup claims.
September 16, 1987	Talks between the Port and Tribe to resolve the dispute surrounding filling of the Milwaukee Waterway failed to produce a solution. In a letter to the Tribe, the Port suggested returning to an attempt to reach a comprehensive agreement with all non-Indian entities involved.
September 25, 1987	A letter was sent to the to Tribe from the non-Indian Steering Committee expressing a strong preference for a comprehensive settlement.
September 28, 1987	Judge Tanner lifted the stay order in Puyallup Tribe v. Port of Tacoma and Union Pacific Railroad, et al. and set a trial date of February 22, 1988.
September 30, 1987	A motion was filed by the defendants requesting the recusal of Judge Tanner.
October 1, 1987	Chief Judge Barbara Rothstein granted a defense request to remove Judge Jack Tanner from hearing the case.
October 8, 1987	A letter was sent to the non-Indian Steering Committee from the Tribe agreeing to negotiate a "broad-base settlement".
October 16, 1987	Judge Tanner announced he, not Chief Judge Rothstein, would decide who would hear the case.
October 19, 1987	Puyallup Tribal International Trade Conference. Speakers included Senator Daniel Inouye, Senator Daniel Evans, Congressman Norm

Dicks, BIA Assistant Secretary Ross Swimmer, Governor Booth Gardner. Senator Inouye pointed out that "an agreement was reached. I would not throw it away." Inouye concluded his remarks by saying that he would return in three weeks to check on the status of negotiations.

November 20, 1987 — Judge Tanner recused himself from the case.

December 3, 1987 — Puyallup Tribal Council accepted petitions for a recall of Council Chair Bertha Turnipseed and Council members Lena Landry and Roleen Hargrove.

January 16, 1988 — Tribal Council members Turnipseed, Landry and Hargrove were recalled.

January 23, 1988 — Judge Rothstein assigned Judge John Coughenour to try the lawsuit by the Puyallup Tribe against the Port of Tacoma and Union Pacific Railroad.

February 2, 1988 — Tribal representatives and attorneys met with representatives of the non-Indian Steering Committee. Bill Sterud, Chairman of the Tribal Council, said that the Tribe would present a proposed settlement to the group within several weeks after the tribal elections (March 12).

February 4, 1988 — A statement was issued to the media from Council members Henry John and Bill Sterud which said that negotiations with the Port of Tacoma were mandated by a tribal referendum in April 1986 and that these negotiations would go forward as soon as new members were elected to the Tribal Council.

February 10, 1988 — Judge Coughenour set January 9, 1989 as the trial date for the Puyallup Tribe v. Port of Tacoma and Union Pacific Railroad case. The Judge also agreed to a request by the Tribe for a three month stay to permit a final attempt to negotiate

	a resolution to the claims. The Judge set June 10, 1988 for hearings on motions to intervene and summary judgment.
February 27, 1988	Roleen Hargrove, Judy Conway Wright, and Nancy Shippentower were elected to fill the three vacant seats on the Tribal Council. Hargrove and Sterud's term will be up in June of 1989 and the other two newly elected Council members will face an election in June of 1988. Henry John's term expires in June, 1988.
March 5, 1988	The State House Ways & Means Committee held a hearing in Olympia on proposed legislation sponsored by Chairman Dan Grimm that would establish an equation for settling land claims by Indian Tribes. The legislation would authorize the state to participate in an amount not to exceed 20% of the cost for all Indian land claims settlements within the State of Washington. U.S. Senator Daniel Inouye spoke in favor of the bill at the hearing, as did representatives of the Governor's Office, private property owners, and public officials from Pierce County.
April 8, 1988	Tribal leaders presented their proposed settlement package to the non-Indian negotiating team at a meeting with Senator Inouye and Congressman Dicks. The value assigned by Tribe to their Proposal was $188 million.
April 13, 1988	The Tribe met with representatives of the Steering Committee to delineate the Tribe's offer and discuss the timetable for further discussions.
April 16, 1988	The Tribal Council presented in detail their proposed settlement package to their membership.

May 16, 1988	Second meeting between the negotiating teams to clarify the Tribe's offer.
May 1988	Proposed Settlement Agreement from non-Indian Steering Committee sent to the Tribal Council.
	Extensive meetings and negotiations.
June 7, 1988	Fife City Council votes not be be party to the Settlement Agreement.
June 13, 1988	Final Proposed Non-Indian Settlement Agreement, dated June 13, 1988 is given to Puyallup Tribal Council.
July 5-7, 1988	Negotiating teams spend 2 days at Alderbrook Inn attempting to reach accord.
July 14, 1988	Fife City Council votes to approve the Proposed Settlement Agreement.
July 15, 1988	The negotiating team and Congressman Dicks hold a news conference to announce the Proposed Settlement Agreement, dated August 27, 1988.
July 22, 1988	Proposed Settlement Agreement mailed to Tribal members.
	Council for plaintiff, defendants, and intervenors jointly request that the Court continue the date of oral arguments, set for July 29, to September 16, in order that the outcome of the August 27 vote not be affected by court proceedings.
July/August 1988	Puyallup Tribal Council announced that this will be a membership decision. The Council prepared an extensive information and education program for their members including 10 information facilitators, several mailings, a video tape, and two meetings of the general membership.
August 12, 1988	Two members of Puyallup Tribe, Silas and Vernon Cross, file a lawsuit in U.S. District Court, challenging the

	right of Pierce County to tax property owned by Indians and non-Indians on tribal territory.
August 20, 1988	Senator Inouye and Congressman Dicks meet with Puyallup Tribal members.
August 27, 1988	Members of the Puyallup Tribe of Indians vote 319-162 to approve the Settlement Agreement, dated August 27, 1988.

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FEBRUARY 16, 1988

Legislative Testimony

of

Tribal Council Chairman Bill Sterud

Mr. Chairman, my name is Bill Sterud. I am the Chairman of the Puyallup Reservation. I am honored by this opportunity to speak before the respected elected leaders of the Houses of Congress.

I am here today to discuss with you the views of the Puyallup Indian Tribe with respect to the Puyallup Tribal Land Claims legislation. For thousands of generations, the Puyallup people lived in harmony both among each other and with Mother Earth. A highly developed social order based on kinship, social ties and religion governed our people.

Our land, by growing the cedar tree, provided wood for our longhouses, bark for our clothing, canoes for transportation and fire for our warmth. Our air, clean and pure, assured us of clean lungs and healthy bodies.

Our water, pristine, pure, clear, gave us our drinking water, fish, clams, oysters and sea animals. Hunger was non-existent.

Our Tamahnous was strong.

I don't need to describe the horrors brought on Indian people by the settling of this great country. Whatever the guise, the westward expansion, manifest destiny, or gold, the result has been the same, disaster to another Indian tribe. I submit, Mr. Chairman, the Puyallup Indian Tribe too has a similar story to tell.

Essentially, going back to 1854 when Territorial Governor Isaac Stevens negotiated the Treaty of Medicine Creek with our ancestors, there was immediate dissatisfaction over the location of the Puyallup Reservation. The treaty reservation totally cut off access to the Puyallup River. Puyallup signifies the name of the river that flows from the upper reaches of Mt. Tahoma (Rainier) to Puget Sound. My Tribe, the Tribe which from time immemorial has relied upon fishing, clamming, oysters and sea animals as a primary source of economic activity and subsistence were, by the Treaty reserve established in the Medicine Creek Treaty, denied access to the Puyallup River. In 1854, the Puyallup Tribe went to war over the terrible inadequacy of the Treaty Reserve. For two years the Puyallup people fought the United States Cavalry and the combined forces of the local and

state military.

In 1856 Governor Stevens met with representatives of the Tribe at a Council on Fox Island and agreed to enlarge the Puyallup reserve to include the Puyallup River and the tidelands on the reserve's seaward boundary.

Our Tamahnous was strong.

In 1856 when the new Puyallup reserve was surveyed, history recounts that agents of the federal government erroneously surveyed the bounds of the reserve and artificially drew a straight "seaward" line across the tidelands of the Puyallup Reservation.

In the 1870s, R.H. Milroy, Superintendent of Indian Affairs for the Washington Territory, recommended to the Department of the Interior that an additional executive order correct the missurvey of 1856 with regard to the ownership of tidelands. Superintendent Milroy recommended that the Tribe be given a new executive order confirming tribal ownership to "section 34" to assure access to valuable tidelands in seaward access to Commencement Bay. In 1873 President Grant executed an Executive Order confirming tribal ownership of section 34.

Between 1870 and 1895 substantial growth occurred in Tacoma. The

great Northern Pacific Railroad established its western terminus in Tacoma precipitating significant non-Indian settlement. As a result of pressure for additional lands for westward expansion Puyallup lands were allotted and in 1903 restrictions against alienation were removed.

Finally, in 1916 in the United States Supreme Court case of **Goudy v. Heath**, allotted lands held in fee simple by tribal members were determined to be taxable by the State of Washington and political subdivisions. By the 1920s what was formerly a 25,000 acre permanent homeland guaranteed by the Treaty of Medicine Creek was reduced to a mere 100 acres. The Tribe continued to exist in a state of unemployment and was subjected to extreme pressures of racial discrimination.

By the 1960s the Tribe began to assert through litigation its treaty rights to fishing. In **Puyallup I, II and III** and in **United States v. Washington**, the Tribe established that the Puyallup Reservation continued to exist and that the treaty rights were the supreme law of the land.

As the Tribe began to exercise its treaty rights more and more racial animosity built. The City of Tacoma vigorously fought the Secretary of the Interior's efforts to assist the Puyallup Tribe in rebuilding their land base. In **City of Tacoma v. Andrus**, the Tribe firmly established its right to rebuild this land base.

The Tribe in **Puyallup Tribe v. Alexander** asserted its treaty fishing rights to prevent the development of a marina project which would be harmful to the fisheries resource protected by the Tribe's treaty rights. In 1983, the Tribe won the return of the former Puyallup riverbed. The former riverbed became dry upland as a result of the straightening of the Puyallup River in 1914 and in 1948 for flood control purposes. The Court's determined that this was an avulsive change of the river's bed and that the Tribe retained ownership to the submerged reserved lands.

In 1984, after extensive research of the Tribe's claims to section 34 the Tribe filed suit in U.S. District Court in **Puyallup Tribe v. Port of Tacoma and Union Pacific Railroad.** The Tribe's claim to ownership was based upon the blatant violations of due process by Judge Hanford in the **U.S. v. Ashton** case in 1909. Judge Hanford's financial conflicts of interest with defendants in that case negate any res judicata or collateral estoppel effect to the **U.S. v. Ashton** case. In 1984, the Puyallup Tribe formally requested the City of Tacoma and other parties to commence negotiations to resolve tribal land claims in an orderly and fair manner. We believe that the Puyallup's land claims settlement agreement accomplishes the goals of all parties to the settlement process.

The settlement agreement represents an historic and monumental effort by all parties concerned to address through negotiations

settlement of substantial tribal claims to lands, resolution of jurisdictional conflicts and the adoption of a fisheries dispute resolution process. The settlement agreement is the culmination of over 4 1/2 years of assiduous negotiations between all of the parties.

Mr. Chairman, the land claims issue of Puyallup are extremely complex and that complexity stems from the actions of Congress and the Executive branch over the last 135 years or so. The hardship which will be worked without an equal participation by the federal government matching the state, local and private share would be untenable. The settlement of the Puyallup Tribal land claims through a negotiated settlement process is a precedent of national significance. In the interest of equity, fairness and justice I respectfully request that you pass House/Senate Bill _____ settling Puyallup Tribal land claims and ratifying the settlement agreement of August 27, 1988. Thank you.

FEBRUARY 16, 1988

Legislative Testimony

of

Tribal Council Member Henry John

My name is Henry John and I am the Vice-Chairman of the Puyallup Tribal Council. Mr. Chairman, I would like to thank the members of this committee for the opportunity to be here today. I would like to say a few words about our understanding of the fisheries aspects of the settlement. One of the most important things about the settlement document is that it makes clear that nothing in the settlement will have any effect on the Tribe's fishing rights. This is very important to the Tribe because our treaty rights are sacred rights. Our fishing rights are the center of our spiritual and tribal life. There have been many occasions when members of our Tribe have gone to jail for exercising their treaty rights to fish, both prior to and after the time that our rights were recognized by the United States Supreme Court.

Another important thing to the Tribe is that the settlement agreement does not limit the Tribe's ability to go to court to stop negative impacts on the fishery, subject to the dispute resolution procedure that I'll talk about a little later.

The settlement agreement provides for a fisheries enhancement and protection program. The enhancement of the fisheries within the Puyallup River basin, including necessary habitat enhancement is a goal that all the parties agree to. The settlement agreement has a formal consultation process where the Tribe and the local government entities will work to resolve differences over land use planning and regulatory decisions. This formal consultation process is required to be used within the 1873 survey area referred to by Chairman Sterud in his testimony. Outside this 1873 survey area the local government parties have agreed on a number of specific fisheries-related objectives in their land use planning and regulatory processes. For example, the adoption of watershed action plans and development of flood control studies will include alternatives sensitive to habitat protection for our fishery resource. It is important to us that Pierce County has agreed to develop standards for gravel removal which will be sensitive to habitat protection. This is a very big problem because the actions by the County in the past have resulted in a substantial amount of siltation, and destruction of the gravel beds necessary for spawning of our various species of salmon.

In addition to these land use and regulatory measures which the non-Indian local governments have agreed to, there are two other features of the settlement agreement that are very important. First, there are provisions for guaranteeing access to the

Tribe's treaty fishery, including a navigation agreement. Second, there will be a fishery dispute resolution process, which will apply to projects undertaken by a party to the agreement where the action may have an in-water effect on the fisheries resource. In general, disputes with the Tribe over fisheries impacts are to be mediated and arbitrated. Binding arbitration will be conducted by a three-member panel of qualified biologists using mitigation and enhancement standards that are set forth in the settlement agreement.

The Tribe views the financial and legal commitments of both the United States and the State of Washington as being important to the future of our sacred treaty-reserved fishing rights. If I could speak my heart to you today, I would ask you to bear witness to the solemn obligation the non-Indian local governments have made to protect the fishery habitat in all aspects and I would ask you to recognize the critical need for the Tribe to acquire additional trust lands, over which the Tribe will exercise jurisdiction to assure that sound land use and regulatory decisions are made to protect our Puyallup way of life. Thank you.

FEBRUARY 16, 1988

Legislative Testimony

of

Tribal Council Member Roleen Hargrove

Mr. Chairman, I'd like to thank you and members of this committee for the opportunity to be here today. My name is Roleen Hargrove and I am a member of the Puyallup Tribal Council. Mr. Chairman, this agreement recognizes the Puyallup Tribe as a sovereign government over our reservation. It establishes cooperative mechanisms for the exercise of jurisdiction on both trust and non-trust lands.

The settlement agreement will assure that the Tribe is included as an economic partner in the growth and prosperity of the Tacoma area. Our economic projections indicate that we will have a substantial income stream from the assets of this settlement. We will use this income to rebuild our land base and address our members' social needs. The assets we receive will be developed using, in part, our ability to obtain financing under the Indian Tax Status Act.

Perhaps the most important aspect of the settlement agreement from my perspective is that the Tribe will have the ability to rebuild its land base that was once so tragically lost. The loss of this land base was the result of the actions of the federal and state governments over many years. The recognized need of the Tribe to rebuild this land base cannot be overemphasized.

By rebuilding our land base the Tribe reestablishes the critical tie between the Tribe's spiritual life and the land. Rebuilding our land base is essential to protect our fishery resources and our treaty fishing rights, it is essential to the social and economic development programs which we have undertaken and it is essential to us as Indian people. Under the settlement agreement the non-Indian parties finally recognize the Tribe as having a right to develop a tribal zoning code over the entire reservation, working out disputes through a formal consultation process. The Tribe's zoning provisions would apply only to trust lands, but would serve to assure a cohesive plan as the Tribe's land base grows. The settlement agreement recognizes that as we reacquire lands they will be accepted into trust using the same standards that apply to any other tribe in the United States.

I can tell you from personal experience the hardships our people have endured because our lands were not held in trust by the United States. When I was a child, my mother received money

through an allotment. My parents purchased a lot in the town of Milton located on the reservation in about 1957. It was a 2-bedroom home and there were seven of us living there, plus relatives now and then. It wasn't an ideal situation. It was an old home. It was probably then near being condemned, but we lived there until approximately 1964 when my mother received additional funds and built a new home on that same lot only to lose it later. When my mother died in 1964, my father, who was not working, had to pay off property taxes and funeral expenses by obtaining a mortgage on our property. It was during that time that it was mentioned to me that my parents felt the property should have gone into trust in the beginning since it was located on the reservation. In 1968 my father was unable to pay off the mortgage and the bank foreclosed on our property. This is not an experience unique to my family. Many, many of our people, as is so firmly etched in the memories of our elders, have lost their lands through this same process.

In 1978, I testified before the Honorable Gerhard A. Gesell in City of Tacoma v. Andrus relating to the Tribe's rights to have lands taken into trust. I'd like to cite for the benefit of this committee the eloquent language used by Judge Gesell in his district court opinion upholding the Secretary of the Interior's authority to take lands into trust on behalf of the Puyallup Tribe. Judge Gesell stated:

> "The Puyallup Tribe, not long ago on the verge of extinct on and even now with only a few acres of land, is

> a striking example of an entity the drafters of section 5 [referring to the Indian Reorganization Act authorizing the Secretary to take lands into trust] sought to aid. The heroic efforts of the Tribe, through its members, to improve itself were well-known to the Secretary, and his willingness to take in trust lands within the historic boundaries of the Puyallup Reservation was neither arbitrary nor irrational. He proceeded well within his discretion."

Judge Gesell also stated "One cannot read the debate surrounding the Indian Reorganization Act without appreciating the groundswell of sympathy for the losses suffered by the Indian tribes as a result of earlier allotment and inheritance laws. Hand in hand went the determination by Congress that the United States should aid in the recouping of these losses by restoring land to an inalienable status. Since Congress has rarely appropriated money for the purchase of trust land, reliance has rested upon the Indians themselves, as the only interested parties, to provide either the land or the money to buy land to be taken into trust for their benefit."

These words mean a great deal to our people. The land is sacred in the memory of my elders. We ask that you approve the settlement agreement and fulfill the promise made to us in the Treaty of Medicine Creek to provide a permanent homeland for the Puyallup Tribe and its people. Thank you again for the opportunity to be here today.

FEBRUARY 16, 1989

Legislative Testimony

of

Tribal Council Member Nancy Shippentower

Mr. Chairman and members of the committee, my name is Nancy Shippentower and I am a member of the Puyallup Tribe, also an elected Council member. And I am here today on behalf of my people.

First, I would like to define the word Puyallup - it means "Generous People."

You have heard a lot of testimony here today about the history of the Puyallup Tribe and our Reservation. It is very important that you are aware of this history and its effect on our people through the generations.

We have always believed that the Creator placed us on the land along the Puyallup River to be Caretakers of the Land, Water, Air and Salmon. This is a sacred responsibility, and as long as we

carried out that sacred trust, the land and waters always provided all life-sustaining materials needed to survive.

About 150 years ago, when the first non-Indian settlers came to our land, the Puyallup River valley was a land of natural abundance. Historians noted that "you could walk across the river on the backs of the fish" when the salmon were running. However, it soon became apparent to our ancestors that these settlers lacked any sense of sacred bonds to the land. They viewed the land and its resources as "**Roads Paved of Gold**" and we were willing to share because we are "Generous People". Our generosity was taken advantage of and the Puyallup Tribe soon became an obstacle to their ambitions.

In hopes of appeasing the greed of these people, our ancestors ceded millions of acres to the United States in the Treaty of Medicine Creek, reserving a very modest amount of land for our own use, and carefully preserving our rights to fish, hunt and gather as a means of survival. Our Reservation was soon surrounded by settlers who were not satisfied with the 99% of our aboriginal lands which they had already obtained through the treaty. Soon we had industry, settlers and ambitious people who wanted what little was left of our Reservation, and they found both legal and illegal ways to obtain it.

Our people were almost landless, most of them lived in

substandard housing below poverty level. With this came low self-esteem and a high alcoholism rate. We have been exposed to ethnocide and genocide and generations of our children have been removed from their parents and sent to Indian Boarding Schools where they were severely punished for speaking their language, practicing their own religion, and even their names were taken from them. The devastating results of this are still with us. But today our Tribal School, Chief Leschi, is reviving our traditional way of life.

In the early years of this century the state and local governments began to deny us our inherent right to fish. Our people continued to fish regardless of the state's rules and regulations. In the 1950's-60's, when I was growing up, this fight escalated into a continuous battle, both in the courts and on the river. There was open war on Indian fishermen, and many of our tribal members were repeatedly beaten, arrested, and spent time in jail simply for insisting on exercising their rights. My father, Don McCloud, Sr., was one of the first people arrested, and from firsthand experience I know this struggle involved the whole family; he was our sole support. When he was in jail, there was simply nothing to fall back on without him to provide for us. Sometimes we had to tape our shoes together in order to go to school. And in school we were subjected to a great deal of hostility from staff and students alike. The hostility was so intense, many tribal members dropped out of school, or went to

Indian boarding schools but that did not stop their struggle.

And yet, we stand before you a proud race of people, willing and striving to make positive social and economic changes for our Tribe and the future generations. I want you to understand that our tribal members have supported this settlement because they feel it's the best means to insure the survival of our Tribe and the preservation of our treaty rights for future generations, and **not** because they feel that it in any way provides just or adequate compensation for the one hundred thirty-five years of deprivation of our lands, livelihood and basic human rights, and of disrespect for our language, culture, religion and government.

For thousands of years, our people lived in harmony with the land we belong to. In the relatively short time since non-Indians began taking our land, the salmon runs have been severely depleted and the land and waters and air around Commencement Bay, at the mouth of the Puyallup River, are among the most polluted in the entire country. Maybe now non-Indians can begin to learn that the idea of having a sacred responsibility to the land has to do with their survival as well as ours. Whether they learn or not, we intend to go on struggling to protect our homeland and its resources.

FEBRUARY 16, 1989

Legislative Testimony

of

Tribal Council Member Gabriel Landry

My name is Gabriel Landry and I am a member of the Puyallup Tribal Council. I want to thank this committee for the opportunity to be here today. I would like to briefly conclude our testimony and I will address a few technical aspects of the settlement that we feel are important.

The settlement agreement provides that we receive a per capita fund, job programs and a permanent social services trust fund. These are important components of the settlement. The per capita will allow tribal members to purchase a house, or build a business, or address other needs which have been unmet for many years. We are in the process of establishing a system to educate tribal members regarding the possible opportunities this per capita can provide them. Our people's unemployment rate runs at approximately 65% according to a Washington State University study; this is outrageous in an area where the unemployment rate is about 7% for non-Indians, and in no small part is due to

racial discrimination in the workplace.

The employment provisions of the settlement will be a historic first. The job training program will be jointly operated by the State of Washington and the Tribe, using an innovative job training program which has won national acclaim. This job training program will train tribal members over a 4-year period; in addition, a group of private businesses in our area have agreed to provide 115 full time jobs for tribal members.

The $22 million permanent trust fund will, by conservative estimates, provide $1 to $1.5 million annually to allow us to forever provide for the needs of our elders, for scholarship monies for our young people and for housing, cultural preservation, supplemental health care and day care as well as other social services.

In addition, the settlement provides for the construction of the Blair project which Congress has previously authorized. During the negotiations it became apparent that any properties of an industrial nature which we were to obtain along the Blair waterway would require improvements. The Tribe will receive direct benefits from the removal of the Blair Bridge, which will greatly improve access to the major industrial property which we will receive from the Port of Tacoma in the settlement. The Tribe now has an interest in the growth and development of the

Port of Tacoma, because this settlement makes the Tribe a recognized partner in the community.

Finally, the Tribe has agreed to pay for governmental services provided to the Tribe or to tribal members, where those services are requested by the Tribe or tribal members on trust properties. We have also agreed with the City of Fife to pay a development fee for general governmental services and school district operations based on a formula set forth in the settlement. The purpose of these agreements was to address the local governments' concerns about the tax base impacts of fee-to-trust transfers. Because Fife is wholly encompassed within the boundaries of the Puyallup Reservation, the parties to the settlement agreement recognize that the City of Fife could be sufficiently impacted by the loss of tax base as a result of the transfer of properties to trust status to make some agreement necessary. The rest of the local governmental entities have a significantly larger revenue base to draw upon, and the majority of their property tax base is outside the 1873-survey area referred to previously. Accordingly, it is the understanding of the Tribe that on future fee-to-trust applications the issue of loss of tax base will not be a serious issue. Again, I'd like to thank the committee for the opportunity to be here today.

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**STATEMENT OF WASHINGTON REPRESENTATIVE ART WANG
ON PUYALLUP INDIAN LAND CLAIMS SETTLEMENT
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
AND THE HOUSE INTERIOR COMMITTEE
February 23-24, 1989**

It is a pleasure to appear before the Committee today to express my support for the federal legislation designed to implement the historic Puyallup Indian Land Claims Settlement. As a State Representative in the Washington State Legislature from the area which is the subject of the tribal claims, I can testify first hand to the impacts of this long-standing dispute on both the Indian and the non-Indian community. Because of my interest in seeking a resolution, I personally participated in the negotiations and I am the prime sponsor of the state bill that implements the settlement agreement. The settlement that is before you today is the result of both communities working together to resolve their problems and to develop a vision for their future.

I am pleased to be able to report to the Committee that the Governor, whose involvement and commitment has been key to the success of the negotiations, has requested funds in his proposed budget which is before the Legislature to implement the agreement. Bills have been introduced in both houses of the Washington State Legislature to implement the agreement. The House of Representatives held the necessary public hearing on the bill on February 17th. On February 10th, Senators Inouye and Gorton and Congressmen Dicks, McDermott, and Chandler presented testimony before a joint House and Senate committee meeting urging support for the settlement. The effort of our own state's congressional delegation, particularly that of Congressman Norm Dicks, has been a key factor in reaching agreement. Senator Inouye's participation and concern has been invaluable to both sides and I believe that it is safe to say that we would not be here before you today without his involvement. That involvement has paid off and I believe that we will be successful in securing the necessary commitment from the state legislature.

The State of Washington is celebrating its Centennial Year. It is extremely significant that we come before you with the State and the Tribe working together, government to government.

The disputes between the Puyallup Tribe, local communities and the State have been bitter and acrimonious throughout most of that first hundred years. The historical relationship between the State and Indian tribes has been filled with disputes over the allocation and protection of natural resources, jurisdiction, reservation boundaries and the use of reservation lands. Litigation between the State and the federal government over Indian tribal and individual rights has been rampant. The U.S. Supreme Court noted that the actions of the State of Washington with regard to implementation of federal court orders designed to protect treaty rights represented the most concerted effort to frustrate a federal court since the desegregation cases in the south. Washington v. Fishing Vessel Ass'n, 443 U.S. 658 (1979). Relationships between the Tribe and the local community have also been based on mutual distrust and misunderstanding, resulting in continued litigation in which neither party really wins.

As we embark on our second century of Statehood, we are seeking to forge new relationships with tribal governments throughout the State; to better understand the things we have in common and to appreciate and respect our differences. This agreement is of enormous significance as a model of the way we should work together to solve our problems. Indian tribes should not have to resort to the courtroom again and again to affirm rights that should be acknowledged by all. It is time to embark upon a new era, one based on cooperation between governments with recognition of mutual interests. All the citizens of the State must recognize that we share this land together and we must all work together to protect it.

This agreement provides a model, not just for the State of Washington, but for every state and Indian tribe in the country. If it can be done here, it can be done anywhere. The State of Washington is now in the forefront of a new era in state/tribal relations, relationships based on a government to government approach to working together. The Puyallup Indian Settlement clearly recognizes the Tribe as a full and equal government with a role to play in important decisions about future growth and development. Because of its unique location in a central urban area, the Tribe must be a full participant in these decisions. The agreement lays the groundwork for that participation.

Let me provide you with a portrait of the area of my legislative district that is the subject of this agreement and the reasons for the state's participation. The area that is impacted by the tribal claims is the third largest urban area in the State of Washington. It includes downtown Tacoma, most of the Port of Tacoma, the former riverbed of the Puyallup River and the City of Fife. Interstate 5 and two state highways run through the disputed area. In the tidelands area, which is the subject of the lawsuit that precipitated negotiations, the State, acting under federal authority, platted and sold most of the land that is claimed by the Tribe. Both the federal government and the State have considerable legal exposure as a result of the tribal claims. Even more important, however, is the economic impact of the clouded title on the development of the area and on the economic growth of the State of Washington.

As a result of the land claims, many private business owners have been unable to secure financing for expansion and new businesses have been unwilling or unable to locate in the area. Many private property owners, including a large number of senior citizens, find themselves unable to sell their homes because of the title cloud created by the land claims. These individuals bought their property with no knowledge of the claims and have nowhere to turn for relief except the governments involved. The impact on the entire State if the Port were unable to develop would be significant. The Port, the sixth largest container port in North America, handles $16.8 billion worth of cargo annually. A significant portion of that cargo is agricultural products from the midwestern United States. 48% of the Port's total export tonnage originates in Washington at a value of $774 million in sales revenue to firms exporting this cargo. It is estimated that 19,000 jobs, both direct and indirect, are attributable to manufacturing and producing this cargo. In the agriculture industry, 2,400 of the 2,700 jobs associated with foreign agricultural exports are in eastern Washington. Approximately 11,600 jobs are associated with the forest product industry and benefit many other areas of the State. The fortunes of the Port and the economic growth of the area impact not only my district but the agri-

cultural industry east of the Cascade mountains and other major industries throughout the State. Thus, this settlement is of major importance to all parts of the State of Washington.

The State will contribute a total of $21 million to the settlement. (Appendix A provides a breakdown of the State's contribution.) The funds will be utilized to meet significant needs of the Tribe that were identified in their original settlement offer. In return for this contribution, the Tribe agrees to relinquish all land claims, both known and unknown, in the State. The Tribe has also agreed to limit its exercise of jurisdiction to trust land within the reservation and will not attempt to assert any form of jurisdiction over non-Indians living on non-trust land. Tribal jurisdiction for enforcement of environmental laws will be limited to trust land. The resolution of these significant issues will prevent years of litigation and allow for economic growth for both the Indian and non-Indian community.

The agreement provides for significant improvement in the salmon resource for all the citizens of the State, both Indian and non-Indian. The State is contributing approximately $10 million to be utilized in improving the Puyallup River and Commencement Bay fisheries through habitat improvement, facilities construction and hatchery operation. These funds will be used by the State and Tribal fisheries managers through their cooperative management program to develop and implement a comprehensive production plan for the Basin. The State Department of Fisheries and the Tribe have jointly developed a plan for the watershed. The goals of that plan will be substantially met with the use of these funds. Increased production and habitat protection will provide more fish for all the fishermen of the area. The agreement will strengthen cooperation between the Tribe and the State in resource development and management.

A fishery dispute resolution mechanism is established under the agreement for resolving conflicts between fisheries resource protection and economic development. It is our hope that this will provide a model for other states, local governments and tribes to resolve disputes over resource and development issues. The agreement provides for binding arbitration in the event that agreement cannot be reached between the parties. This process will avoid the long and costly delays created by tribal objections to the issuance of permits and resulting litigation. It will also provide a focus and a forum for protection of the fisheries resource.

The State will, as part of its contribution to the settlement, provide funds to construct several badly needed social service facilities on the Reservation: a 20 bed eldercare facility; a 20 bed youth substance abuse facility and a 42 child daycare center. The State will also provide training in alcoholism counseling, daycare, child welfare and mental health training. These facilities will provide programs in areas that are of major tribal concern.

The agreement provides for a job training program developed between the Tribe and the State Department of Employment Security. The program combines the efforts of the State, local governments, private businesses and the Tribe to provide both job training and placement. Training will be provided to 265 tribal

members. The private business community will provide 115 jobs. This program will be significant to the Tribe where the current rate of unemployment hovers around 75%. It will also help to forge a new and better relationship between the Tribe and the local business community.

The State will also contribute funds to the Blair Waterway Project. The project will benefit the Tribe who receives property for a marine terminal on the Blair Waterway. It will also benefit the community as a whole by solving the long standing problems associated with the outdated Blair Bridge and improving access to central Tacoma.

The federal government, the state government and the local governments, including the Port, all bear some responsibility for the situation. The local governments and the Port have already taken the necessary actions to implement the agreement. The Washington State Legislature is considering the necessary legislation. Federal support and funding is critical to the successful implementation of the settlement. I urge your favorable consideration of this very critical agreement so that we may begin to build the future.

ATTACHMENT II

[illegible] TO PUGET
[illegible] ACCOUNT

AGENCY	GENERAL FUND-STATE	STATE BUILDING CONSTRUCTION ACCOUNT	MOTOR VEHICLE FUND	PURPOSE
Permanent Trust Fund	3,150,000			State contribution to a $22 million permanent trust fund designed to enhance the tribes ability to provide services to members. This trust fund is to be used solely for housing, the needs of the elderly, burial and cemetery maintenance, education and cultural preservation, day care, and other social services. The permanent trust fund will be held by the U.S. Government and will last as long as the tribe exists. The principal will remain untouched. Only income to the fund can be spent in any one year.
Fisheries				Funds for improving the Puyallup River and Commencement Bay fisheries resource through the following activities:
		7,235,000		Site acquisition, facilities construction and improvement, habitat improvement, and equipment purchase.
	700,000			State contribution to a $2 million trust fund (Port will contribute $1.3 million) to be used for operation and maintenance of fish hatcheries which will be constructed under the agreement.
Wildlife		808,000		Funds will be used to make improvements to the existing state facilities in the Puyallup River basin (Clark's Creek Hatchery) with the goal of increasing production.
Employment Security	527,000			State contribution to a 4 year job training program (total cost: $973,000). The program will be designed to accommodate 265 tribal members and will include the following activities: pre-employment training, basic skills remediation, job search workshops, on-the-job training, vocational training, support services and follow-up, job placement, and technical assistance for development of tribal industries.

AGENCY	GENERAL FUND-STATE	HOUSE BUILDING CONSTRUCTION ACCOUNT	MOTOR VEHICLE FUND	PURPOSE
[illegible]		988,000		Construction of a 20 bed elder care facility.
		988,000		Construction of a 20 bed youth substance abuse facility.
		250,000		Construction of a 42 child day care center.
		5,000		Purchase of computer equipment for the tribal mental health center. This equipment will allow Tribal mental health services to tie into the State mental health computer system.
		127,000		Training fund for training relating to alcoholism, counseling, day care, child welfare, and mental health and social management.
Transportation "Blair Nav. Project"	908,000		6,458,000	State contribution to the Blair Navigation Project, the total cost of which is $81 million. Project includes widening and deepening the Blair Waterway and either replacing the existing Blair Bridge or removing the bridge and building a bypass road.
TOTAL	4,926,000	9,417,000	6,458,000	GRAND TOTAL $21,800,000

TESTIMONY BEFORE THE SENATE SELECT
COMMITTEE ON INDIAN AFFAIRS
FEBRUARY 24, 1989
BY
BOOTH GARDNER
GOVERNOR
STATE OF WASHINGTON

Mr. Chairman and distinguished members of the Senate Select Committee on Indian Affairs, I am Booth Gardner, Governor of the state of Washington. It gives me a great deal of pleasure to report to you that the state of Washington, Pierce County, the cities of Tacoma, Fife and Puyallup, the Port of Tacoma, private property owners, and the Puyallup Tribe of Indians have agreed to a settlement that will resolve all land claims known or unknown within the state of Washington.

This agreement charts an important new course of cooperation between the state of Washington and Puyallup Tribe, pointing the way to increased prosperity for all of us. I am also pleased to tell you that all parties to this agreement have or are moving toward ratification. Please join us in this monumental agreement by enacting S 402.

The settlement agreement was more than four years in the making. The process is a clear demarkation from old habits of confrontation to new habits of cooperation. An essential feature of the process is the government-to-government relationship. It is consistent with my recent proclamation on State/Tribal governmental relations policy which concludes, "that the state of Washington accepts the fundamental principle and integrity of the government-to-government relationship between the State and the Indian Tribes, and that this principle shall be the basis of the State's Indian Tribal Governmental Policy." Persistence and leadership on both sides forged an agreement which will open a new era in Indian and non-Indian relations. I truly believe it is an historic agreement and ask the Congress, along with the Administration, to take the necessary steps to give this agreement life and permanence.

Originating more than 100 years ago, the land claims are the results of compounding errors and misunderstandings involving the Puyallup Indians and the federal government, state government, and private property owners. Today these claims threaten not only the Pierce County area, but the whole state economy. The settlement of these claims has taken on national significance because this reservation exists within a major urban industrial area -- a highly unusual circumstance.

This historic agreement will begin putting behind us over a century of distrust and open conflict. Successfully implementing this settlement will set the stage for the next 100 years and beyond. Cooperation, as opposed to litigation, has resulted in a win-win situation. Win-win strategies set the stage for

increased collaboration and mutual problem solving. We all see ourselves as future partners in the economic development of the region.

The economic opportunities before us are extremely exciting. The Port of Tacoma is the only major west coast port with room to grow and has a plan to accommodate the next generation of cargo ships anticipated to start arriving in the mid-1990's. Since the port serves as a gateway to the Pacific Rim, the benefits will reach well beyond the boundaries of Pierce County. Indeed, I believe the entire northwest region will benefit.

The settlement also brings substantial benefits to the Puyallup Tribe and its members. Years of litigation will be eliminated. The Tribe will receive a lasting legacy of land, economic development and jobs, fisheries enhancement, and a permanent trust fund to provide social and health services to members, as well as a one-time payment to each member of the tribe. A cooperative approach will be established for intergovernmental relations. This includes:

-- a system of consultation and dispute resolution for land use matters and environmental concerns;
-- a procedure for determining how future lands go into trust;
-- an agreement which resolves navigational conflicts;
-- an agreement on how future governmental services are to be provided; and
-- the establishment of future programs related to fisheries and flood control.

The Puyallup Tribal Settlement Agreement carries a price tag -- $162 million. This is a substantial sum. It is a reasonable sum which all of us are willing to share. It is a reasonable sum to set aside an insurmountable impediment to growth, development and prosperity for Indian and non-Indians alike. I have included $21 million in the budget I submitted to the Legislature to cover the state share. In addition, legislation sponsored by the entire Pierce County delegation has been introduced which will provide authority to relinquish the state's claims to the Puyallup riverbed to the Tribe. This bill also includes authorization for local governments to establish local improvement districts for the purpose of funding the settlement of Indian claims. I expect passage of the legislation and appropriation by late spring.

We are on the verge of taking an historic step. Local governments have already acted to ratify their participation. The Tribe has voted two to one in favor of the agreement. Private interests are ready to make their contribution. The state of Washington is moving toward delivering its share. I call upon you and the Congress to move with us and enact S 402.

The State of Washington

Proclamation

STATE/TRIBAL GOVERNMENTAL RELATIONS POLICY

WHEREAS, it is the intent of the Governor of the State of Washington to confirm its government-to-government relationship with Washington tribes; and

WHEREAS, the State of Washington recognizes that there are 26 separate and distinct federally recognized Indian tribal governments located within the boundaries of the state; and

WHEREAS, the State of Washington and the tribal governments recognize the state contains 39 counties and numerous other local governments with independent and often overlapping interests and legal authority; and

WHEREAS, the State and tribal governments acknowledge that tribes and the state have historical relationships and unique rights shaped by federal and state constitutions, statutes, and treaties with the United States government and executive orders of the President;

NOW, THEREFORE, I, Booth Gardner, Governor of the State of Washington do hereby proclaim that the State of Washington accepts the fundamental principle and integrity of the government-to-government relationship between the State and the Indian Tribes, and that this principle shall be the basis of the State's Indian Tribal Governmental Policy.

Signed, this 3rd day of January, 1989

Governor Booth Gardner

TESTIMONY OF MAYOR DOUG SUTHERLAND
(02/14/89)

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS DOUG SUTHERLAND, AND I AM THE MAYOR OF THE CITY OF TACOMA, WASHINGTON. I AM HERE TO COMMENT UPON THE PROPOSED PUYALLUP INDIAN LAND CLAIMS SETTLEMENT.

THIS SETTLEMENT IS OF THE GREATEST IMPORTANCE TO THE CITY OF TACOMA, AND INDEED TO ALL OF THE PEOPLE OF THE STATE OF WASHINGTON.

THE PEOPLE OF OUR CITY AND THE MEMBERS OF THE PUYALLUP TRIBE HAVE LIVED TOGETHER FOR MORE THAN 100 YEARS. OUR CO-EXISTENCE HAS NOT ALWAYS BEEN EASY.

WE HAVE A HISTORY OF DISPUTE, DISTRUST AND BAD COMMUNICATIONS THAT HAS HURT US ALL. THESE CONFLICTS OVER HISTORY HAVE BEEN MORE OR LESS PUBLIC, MORE OR LESS CONTENTIOUS, AND MORE OR LESS DESTRUCTIVE DEPENDING ON THE LOCAL POLITICS AND PERSONALITIES INVOLVED. WE NOW HAVE AN OPPORTUNITY, WITH THE HELP OF CONGRESS, TO PUT THAT HISTORY BEHIND US.

THE CITY OF TACOMA AND THE PUYALLUP TRIBE HAVE HAD TWO GENERAL KINDS OF DISPUTES WHICH THIS SETTLEMENT ADDRESSES:

FIRST, THERE HAVE BEEN ONGOING DISAGREEMENTS OVER THE AUTHORITY OF THE CITY GOVERNMENT AND THE TRIBAL GOVERNMENT WITHIN THE HISTORIC BOUNDARIES OF THE PUYALLUP RESERVATION. QUESTIONS AS FUNDAMENTAL AS POLICE AUTHORITY, THE POWER AND OBLIGATION TO PROTECT THE HEALTH AND WELFARE OF THE PUBLIC, ZONING AUTHORITY, TAX AUTHORITY, BUSINESS REGULATION, AND OTHER FUNDAMENTAL JURISDICTIONAL POWERS AND OBLIGATIONS HAVE BEEN UNCLEAR AND THE SUBJECT OF DISPUTE.

THE SECOND SOURCE OF DISPUTE BETWEEN THE PUYALLUP TRIBE AND PROPERTY OWNERS WITHIN OUR CITY HAS TO DO WITH UNRESOLVED CLAIMS TO LAND.

FOR MANY REASONS WHICH YOU HAVE ALL READY HEARD ABOUT, THE PUYALLUP TRIBE HAS CLAIMS AGAINST OWNERSHIP OF LANDS NOW IN THE HANDS OF NON-INDIANS. THE LANDS UPON WHICH THESE CLAIMS ARE MADE ARE THE INDUSTRIAL HEART OF THE CITY OF TACOMA.

THESE OUTSTANDING CLAIMS CLOUD TITLE TO THESE LANDS. BECAUSE OF THE TRIBE'S SOVEREIGN TREATY STATUS, WE AT THE LOCAL LEVEL HAVE NO ACCESS TO ANY COURT TO RESOLVE THESE CLAIMS WITHOUT THE TRIBE'S CONSENT. THE SALE, TRANSFER AND INVESTMENT IN THESE LANDS HAVE BEEN SIGNIFICANTLY IMPAIRED, AND THIS HAS HAD A DRAMATIC NEGATIVE EFFECT UPON DEVELOPMENT OF BUSINESS AND INDUSTRY IN OUR CITY.

WHAT WE GET FROM THIS SETTLEMENT IS PREDICTABILITY AS TO RESOLUTION OF THESE ISSUES. THE SETTLEMENT AGREEMENT REPRESENTS THE PRODUCT OF FIVE YEARS WORK AND NEGOTIATIONS THAT PROVIDES A MECHANISM FOR RESOLVING THESE DISPUTES AT HOME AND BETWEEN OURSELVES. IT ALLOWS US TO AVOID THE COST, DELAY AND THE UNCERTAINTY OF LITIGATION, AND TO SOLVE THESE PROBLEMS THROUGH CONSULTATION AND COMPROMISE.

IN HUMAN TERMS THE OPPORTUNITIES FOR CULTURAL UNDERSTANDING, CO-EXISTENCE AND ECONOMIC GROWTH ARE GREATER THAN EVER BEFORE. THE COMMUNITY OF OUR INDIAN AND NON-INDIAN PEOPLES IS READY TO PULL TOGETHER AS NEVER BEFORE.

WE NEED YOUR SUPPORT AND ASSISTANCE TO SOLVE THESE PROBLEMS, AND TO MOVE FORWARD IN COOPERATION AND MUTUAL ASSISTANCE. I URGE YOUR SUPPORT FOR THIS MEASURE.

TESTIMONY OF JOHN W. LADENBURG
PIERCE COUNTY PROSECUTING ATTORNEY

BENEFITS OF PUYALLUP TRIBAL SETTLEMENT AGREEMENT

I. Jurisdictional Issues and Agreement.

A. The agreement avoids the prospect that current jurisdictional requisites of state and local governments, on which virtually all economic and social intercourse in the area has been based for over a hundred years, will be changed by future attempts to amend the tribe's Constitution to assert broader tribal jurisdictional claims. The Tribe agrees not to attempt to assert authority to tax non-indians and non-indian land within the survey area, the threat of which has seriously hindered development in one of the nation's best Pacific Rim ports.

B. Where the current jurisdiction of state and local governments over non-trust land might conflict with tribal jurisdiction over adjoining trust land, the agreement provides for consultation leading toward compatible approaches and common standards and procedures to be used in both jurisdictions. This is particularly important in areas of land use standards.

C. Where services of state and local governments are needed by properties over which the tribe has jurisdiction and which are thus out of the enforceable service area of state and local governments, the agreement establishes a mechanism whereby properties will receive local services and utilities upon execution of enforceable agreements to pay for such services.

On the other hand, where the Tribe provides necessary services, such contracts may not be needed. Jurisdiction over trust properties is not substantially changed, but a mechanism is established for obtaining services to both trust and non-trust land, even where the ability to provide the service would otherwise be dependent upon the potential to involuntarily enforce obligations against the property.

D. If tribal treaty fishing rights might arguably authorize it to exercise jurisdiction or governmental authority over non-trust lands and non-Indians on those lands, the parties have agreed that the Tribe will not do so, but may assert rights under governmental process otherwise applicable under federal, state or local law. This provides the Tribe a forum suitable to both Indians and non-Indians under uniform substantive and

procedural laws necessary for effectively dealing with environmental issues which know no boundaries. The Tribe agrees to further such a uniform approach by adopting standards for trust lands within its jurisdiction which "will meet or exceed the highest standards of federal and state environmental protection...." It also commits the parties to confer in attempts to work out uniform standards for environmental protection.

Tribal access to Federal courts or to federal or state permit processes to prevent negative impacts on its treaty fishery remains unaffected, except where parties specifically limit themselves to an enforceable arbitration process to resolve conflicts between fisheries and development.

E. Because even Tribal rights to use Federal Courts and permit processes to minimize the effect of waterside development on treaty fisheries often cause greater expense and delay than is acceptable, the agreement contains a arbitration process, peculiar to fisheries, which binds parties to that portion of the agreement. The parties believe that the cooperative studies and processes contained in the agreement, with binding arbitration of unresolved disputes, is preferable to unrestrained litigation which is likely to render development impracticable, even where litigation would demonstrate that proposed development is proper.

F. On trust land within the Area, federal and Tribal environmental laws and procedures will apply and the Tribe will be the exclusive delegee of any federal environmental authority there. Similarly, environmental laws will be exclusively administered on non-trust land within the 1873 Survey Area by federal, state and local governments and the state and its political subdivisions will be the exclusive delegee of any federal environmental authority concerning such areas. Each will be able to comment in processes exclusively controlled by the other, and consultation to achieve consistent and cooperative environmental programs will be undertaken.

G. Though jurisdictional changes are few, cooperative and consultative processes abound to achieve uniform or at least compatible standards and processes. The consultative methods are modeled on existing agreements between local governments insuring that the Tribe will

be dealt with on a government to government basis. Jurisdiction of Federal courts to enforce consultation provisions and arbitration decisions in fisheries matters, is expressly acknowledged and immunity waived.

II. Conveyance of Current and Former Puyallup Riverbed and Tidelands.

A. The State conveys to the Tribe the current riverbed within the Survey Area, preserving and allowing reasonable easements for needed public improvements, and providing for joint planning and negotiation within 3 years of the Agreement for flood control. Fishing rights within the river will not be diminished or enlarged by these conveyances. Conveyance of uplands to the Tribe will be described by others.

B. The agreement provides for extinguishment of all Tribal claims to land in the area, except for specifically mentioned parcels owned or to be conveyed to the Tribe.

1. The Tribe gives up all claims to lands in the former riverbed (largely possessed by non-Indian grantees whose predecessors originally took from the State after the river was rechanneled in the 1930's to its present location).
2. It extinguishes claims to tidelands abutting, but outside the Survey Area, which the Tribe claims the U.S. should have included within its reservation, except those specifically conveyed to the Tribe by the agreement.

C. These provisions remove the onerous clouds on title which have severely restricted economical uses of both Indian and non-Indian property in the area, and the even more devastating result upon those who have owned and occupied former riverbed land for many years, which has recently been determined to belong to the Tribe.

The agreement also gives the Tribe control over the actual riverbed within the Area, so important to its fishery. Extinguished are the claims that the United States improperly allowed transfer of Tribal lands and caused unjustified reliance on resulting land titles by non-Indians in the major national port and industrial area which it has become.

III. **County/Tribe Land Use and Environmental Conflicts Tremendously Improved by the Agreement.**

A. Because actions on property within the exclusive jurisdiction of one of the parties affect the property under the jurisdiction of the other, the agreement includes implementing provisions of great import to local governments and the Tribe. Both governments need to be able to efficiently and effectively serve and protect their citizens from the harms caused by unrestrained development. The agreement calls for formation of:

(1) watershed management plans which affect both areas and the water resources they share,
(2) land use and resource use plans and regulations,
(3) environmental protection regulations to increase fish production, and plans to improve or preserve the environment, including wetlands management, flood control, and streamside vegetation plans.

B. At present, development on land not under Tribal control may cause conflict by jeopardizing tribal interest in water quality and fisheries habitat. Similarly Tribal concerns over effects on fisheries habitat and production jeopardize development essential to the port, and to the commerce of the nation, when they are expressed in litigation and combative administrative processes rather than in a process to achieve a coherent approach to development in a manner which will adequately protect the environment and fish production.

The patchwork jurisdictional framework caused by past federal and state policies, and the enormous reliance upon the resulting non-Indian ownership now tend to create uncertainty which impairs the ability of both Tribal and local governments to provide coherent and efficient services to their citizens. It also has substantially impaired investment in both Tribal and non-tribal land which is needed by the nation to meet the rapidly expanding demand of Pacific Rim foreign trade. The agreement will promote certainty in the regulations applicable to use of land, and certainty as to a process which can be used to obtain land use and environmental decisions without fear of lawsuits by competing jurisdictions.

IV. Conclusion that the Agreement is Important to Pierce County.

A. The primary benefits to Pierce County of the agreement, many of which I have mentioned, are:

1. Government services can be provided and planned when it is known that one set of plans or regulations is applicable. The plans should be substantively better if they meet the needs of both the Tribe and state and local governments and their people. Enforcement of uniform plans is much more likely to achieve the desired protection of the environment and public welfare, than would conflicting plans affecting areas with boundaries which defy logic.

2. Necessary development and growth can be done more economically, if ownership is not clouded by the past and by the risk that all investment will be claimed by another.

3. Land values and the resulting real property taxes upon which local government relies to perform virtually all services to its citizens will not be depressed by clouds on title or by fears of the impact of unknown actions, laws, taxes or regulations which may be instituted by a competing government in which one has no franchise or rights.

4. Where economics require that all land served by public improvements share in the expense of providing those improvements, the agreement to pay for services rendered by Pierce County to trust property in the Area, allows economic construction of public improvements. Without such an agreement, Pierce County could not provide services without a right to payment, and the Tribe could not afford to provide the same service economically to the scattered properties which it would otherwise need to serve. Wasteful duplication of governmental services can now be avoided if the process provided by the agreement is followed.

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TESTIMONY BEFORE SENATE SELECT COMMITTEE
ON
INDIAN AFFAIRS

February 24, 1989

BY RON CROWE, MAYOR
CITY OF PUYALLUP, WASHINGTON

CHAIRMAN INOUYE AND DISTINGUISHED MEMBERS OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, I AM RON CROWE, MAYOR OF THE CITY OF PUYALLUP, THE CITY NAMED FOR THE PUYALLUP INDIAN TRIBE WHICH MEANS "GENEROUS PEOPLE". IT GIVES ME A GREAT DEAL OF PLEASURE TO REPORT TO YOU THAT THE PUYALLUP CITY COUNCIL HAS RATIFIED THE SETTLEMENT AGREEMENT AND APPROPRIATED MONIES FOR OUR SHARE OF THE AGREEMENT.

THE PROPOSED PUYALLUP TRIBAL SETTLEMENT WILL ESTABLISH A PROCESS FOR THE PARTIES TO CO-OPERATE IN THE FUTURE. THIS PROCESS HAS NOT EXISTED IN THE PAST AND DISPUTES HAVE RESULTED IN DISTRUST AND LITIGATION. THE BY-PRODUCT HAS BEEN CONFLICT AND SUFFERING ON BOTH SIDES. THE FOUR YEARS WE HAVE SPENT TOGETHER NEGOTIATING THE PROPOSED AGREEMENT HAS BUILT A MUTUAL RESPECT AND A FOUNDATION WHERE-BY ALL PARTIES CAN MOVE FORWARD TO SUCCESSFULLY IMPLEMENTING THIS AGREEMENT.

I AM HERE TODAY TO ASK CONGRESS TO JOIN US, INDIANS AND NON-INDIANS IN BEING A PARTNER OF THIS AGREEMENT.

PUYALLUP IS A RESIDENTIAL COMMUNITY OF 21,000 POPULATION LOCATED IN A HIGHLY URBANIZED AREA OF PUGET SOUND. WE HAVE SOME FUNDAMENTAL INTERESTS AT STAKE WHICH WILL BE RESOLVED IF CONGRESS, ALONG WITH THE ADMINISTRATION, TAKE THE NECESSARY STEPS TO IMPLEMENT THIS AGREEMENT.

THE CITY HAS PROPERTIES WHICH ARE AT RISK AS A RESULT OF THE CLAIMS, PARTICULARLY THE RIVERBED CLAIMS. THE CITY'S WASTEWATER

TREATMENT PLANT WHICH WAS FINANCED BY FEDERAL GRANTS FROM THE ENVIRONMENTAL PROTECTION AGENCY, STATE OF WASHINGTON AND LOCAL RATE PAYERS IS LOCATED ON THE FORMER RIVERBED OF THE PUYALLUP RIVER. THE TRIBE HAS PREVAILED BEFORE THE SUPREME COURT AGAINST THE PORT OF TACOMA ON OWNERSHIP OF THE FORMER RIVERBED. SHOULD THE TRIBE BRING A CLAIM TO THE LAND IN WHICH THE TREATMENT PLANT IS LOCATED, IT COULD VERY LIKELY RESULT IN LONG DRAWN-OUT COURT BATTLES AND POTENTIALLY THE RELOCATION OF A $25 MILLION FACILITY.

IN ADDITION TO LAND, THE PUYALLUP TRIBE CLAIMS CERTAIN GOVERNMENTAL JURISDICTIONAL RIGHTS OVER ALL THE AREA WHICH LIES WITHIN THE 1873 SURVEYED RESERVATION. A PORTION OF THE CITY OF PUYALLUP LIES WITHIN THAT DESCRIBED LAND AREA.

AT PRESENT, THE MAJORITY OF THIS LAND IS DEVELOPED AND IS OCCUPIED BY NON-INDIAN HOMEOWNERS AND BUSINESSES. THE RIGHTS OF GOVERNMENTAL JURISDICTION BY THE PUYALLUP INDIAN TRIBE INCLUDE IMPOSING PROPERTY TAXES; LAND USE PLANNING; ZONING REGULATIONS; BUILDING CODE REGULATIONS; BUSINESS REGULATION AND TAXES; POLICE AND FIRE PROTECTION; AND ENVIRONMENTAL REGULATIONS.

WHEN THIS SETTLEMENT AGREEMENT IS IMPLEMENTED, THESE ISSUES WILL BE RESOLVED. THE TRIBE AGREES TO RELINQUISH ALL LAND CLAIMS WHICH INCLUDES THE FORMER PUYALLUP RIVER BED. THIS WILL ALLOW THE CITY OF PUYALLUP WITH CERTAINTY AND PREDICTABILITY, TO CONTINUE TO MAKE CAPITAL INVESTMENTS IN UPGRADING THE WASTEWATER TREATMENT PLANT. THE AGREEMENT WILL ENSURE ENVIRONMENTALLY CLEAN DISCHARGE OF TREATED SEWAGE INTO THE PUYALLUP RIVER.

ADDITIONALLY, THIS AGREEMENT PROVIDES THAT THE TRIBE WILL NOT ASSERT GOVERNMENTAL JURISDICTION TO NON-INDIANS ON THE RESERVATION. THIS MEANS THAT THE TRIBE WILL NOT ATTEMPT TO TAX OR ASSERT POLICE POWERS OVER NON-INDIANS; LANDS; BUSINESSES; AND HOMEOWNERS. HOWEVER, THE TRIBE WILL CONTINUE TO HAVE JURISDICTION OVER TRUST LANDS AS PROVIDED IN CURRENT FEDERAL LAW.

THE PUYALLUP TRIBAL AGREEMENT PROVIDES FOR A PARTNERSHIP APPROACH BETWEEN GOVERNMENTAL ENTITIES, PUYALLUP INDIAN TRIBES AND LOCAL GOVERNMENTS THAT AT PRESENT DOES NOT EXIST. IT ESTABLISHES GOVERNMENTAL AUTHORITY AND RESPONSIBILITY THROUGH A SYSTEM FOR CONSULTATION AND DISPUTE RESOLUTION FOR LAND USE MATTERS AND ENVIRONMENTAL CONCERNS. THE AGREEMENT DESCRIBES A COOPERATIVE PROCEDURE FOR DETERMINING HOW FUTURE TRIBAL LANDS ARE PLACED IN TRUST AND HOW FUTURE GOVERNMENTAL SEVICES ARE TO BE PROVIDED. WE BELIEVE THAT WE HAVE LAID A FOUNDATION FOR THE FUTURE OF MUTUAL RESPECT AND COOPERATION.

THE OPPORTUNITY BEFORE US CAN DEMONSTRATE THAT THROUGH NEGOTIATION AND HARD WORK, EVERYONE BECOMES A WINNER. I RESPECTFULLY REQUEST THAT YOU AND CONGRESS JOIN US TO ENACT THE PUYALLUP TRIBAL AGREEMENT.

TESTIMONY OF JOHN MCCARTHY, COMMISSIONER
PORT OF TACOMA, WASHINGTON

BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
AND THE
HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

FEBRUARY 23 & 24, 1989

Mr. Chairman and members of the Committee, my name is John McCarthy and I am a Commissioner of the Port of Tacoma. I am pleased to be here today to testify on behalf of the Port in support of the Puyallup Tribe of Indians Settlement Act of 1989.

Ports in Washington State were created by statute to foster economic development and to create jobs in their respective communities. A graphic example of the important role played by ports in Washington is that one out of every five jobs in our state is created by international trade, over 15,000 in Pierce County alone. In the United States only Alaska is more dependent on trade.

The Port of Tacoma has grown dramatically in recent years and it is now the sixth largest container port in North America and the 20th largest in the world. In 1988, 15.1 million short tons of cargo passed through our port, an increase of 49 percent in one year. Our major export commodities include lumber, grain, machinery, and fruit. We are also actively and successfully promoting manufacturing and distribution facilities at and near the Port.

We have grown because of our ideal location for Pacific Rim trade, our deep-water terminal facilities, our state-of-the-art intermodal rail technology, our efficient labor force and the acreage we have available for development. Our growth has been inhibited, however, by the unresolved claims of the Puyallup Tribe to land in and near our Port and by the historical conflicts between the Tribal interest in the development of the fishery resource and the Port's mandate to create economic development and job opportunities.

We have been pleased to be a major participant in the negotiations to resolve these disputes. The Port of Tacoma will contribute $43 million to this settlement in cash and valuable industrial and waterfront land that gives the Puyallup Tribe the opportunity to play an active role in international maritime activities.

We support this settlement because we believe that it holds the promise of a new era of cooperation and economic

progress for all the citizens of our region and will allow us to continue to play a major and growing role in strengthening our nation's position in the world marketplace.

Our Port staff recently completed a study of the economic impact on marine terminals and industrial development if we fail to settle these claims. The study concluded that $500 million in capital improvement projects over a 10-year period would come to a standstill. This would result in the loss of 6650 permanent jobs and 18,900 temporary construction jobs and $504 million in additional annual gross sales in the State.

If this settlement is approved, however, the Tacoma area will benefit from a dramatic expansion of the Pacific Rim trade through our region. In particular, the opening of the Blair Waterway to new marine development will enable both the Port and the Puyallup Tribe to meet a large portion of the expected new demand for marine terminal facilities in Puget Sound.

Mr. Chairman, we can no longer allow the fact that we are Indian and non-Indian to divide us. This settlement is just a beginning and we look forward to working with the Puyallup Tribe in the future for the benefit of our entire community.

I would be pleased to answer any questions you might have, and thank you for the opportunity to speak to you today.

TESTIMONY BEFORE THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

AND THE

HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

FEBRUARY 23 AND 24, 1989

BY B. CORRY McFARLAND, CHAIRMAN

COMMENCEMENT BAY TIDELAND OWNERS COMMITTEE

Mr. Chairman, distinguished members of the Committee, I am B. Corry McFarland, Chairman of the Commencement Bay Tideland Owners Committee. The Committee represents approximately seventy-five individuals and companies located in the tideland areas of the Puyallup River which are affected by the Puyallup Indian Tribal land and jurisdictional claims. The Committee was established in 1984 to ensure that the interests of property owners in the affected area would be properly represented through a negotiation process with the intent of reaching a settlement, thereby avoiding costly and lengthy litigation. All parties reached an accord in August of 1988, after four years of continual negotiation.

My personal involvement in this process began in 1984 with the inception of the Committee. I am the president of McFarland Cascade, a family-owned small business holding company which has owned and operated a wood preservation and remanufacturing facility located on the Commencement Bay tidelands since the early 1930's. My company directly employs approximately 250 people at six sites in the four Northwest States and Canada, with over 120 employed at the manufacturing facility and corporate headquarters in Tacoma.

The original operating facility of Cascade Pole Company, one of the McFarland Cascade Group, was located on land leased from the Port of Tacoma. In the 1950's, Cascade Pole Company purchased more than thirty acres adjacent to the Puyallup River as our future operating site. In 1972, Cascade Pole Company was advised by the Port of Tacoma that they must move off the leased property due to the rapid development of containerized shipping. In the next two years, Cascade Pole Company acquired thirteen additional acres adjacent to the thirty previously owned acres, and in 1974 through 1975 established a very modern, state-of-the-

art, integrated wood processing and pressure treating facility with a very substantial capital investment. The company continued to make improvements and capital expenditures at the site over the succeeding years for dry kilns, storage buildings and lumber remanufacturing facilities until 1983.

We were fortunate in securing a substantial mortgage on the property and improvements to refinance basic debt early in 1983 when our corporate headquarters moved to the Tacoma site from Northern Idaho. Initial title insurance was issued with exceptions for the Puyallup Indian Tribal land and jurisdictional claims. However, the exception for land claims was deleted after the company's strong objection pointing out the property was entirely outside the boundaries of the Puyallup Indian Reservation. The property is, however, included in the lands subject to this dispute. Since the initiation of the lawsuit against the Port of Tacoma and the Union Pacific on adjacent property, no further term financing has been possible at our site.

Many of the members of the Commencement Bay Tideland Owners Committee have experienced similar problems with securing mortgage financing for expansion of operations within the areas affected by the Title Insurance exceptions. Sales of real estate and operating businesses in the last four years have dwindled to very nearly zero. Very few real estate brokers, including those of national recognition, will seriously list property in the affected area as they know that the transaction cannot be completed without clear title. In essence, the economic development of the area has come to a stand-still pending the resolution of both the land and jurisdictional claims on the Tidelands as well as the Riverbed areas of the Puyallup River.

The lack of resolution of these claims through the implementation of the current Settlement Agreement would not only send the issue to the Courts for an indeterminate time span, at great cost to all parties involved, but would continue to depress the property values in the area since the owners cannot sell without clear title.

These businesses would continue to see their net worth diminish due to the inability to realize the full value of any of the assets of the businesses. They would continue to suffer because of the inability to borrow money using their land as collateral, at the cost of future business and job expansions which will impact the entire community. The inability to develop undeveloped lands will continue; the ability to sell land will diminish further, even at substantial

discounts.

Should the Puyallup Tribe of Indians be successful in asserting its claims through the Courts, there would be an increased potential for bankruptcy as the only option for the many businesses with substantial capital investment and improvements in their property.

All parties to this negotiated settlement have been sincere in their efforts to resolve this issue and maintain balance and goodwill in the accord. They also represent a broad spectrum of community and governmental support. Members of our organization and other residents and business owners in and around the Puyallup Indian Reservation urge the Committee's and Congress' endorsement and federal funding of the Settlement Agreement. This Agreement means a great deal to the Port and City of Tacoma, Pierce County, Washington State and, frankly, our Nation, as it represents a model for a negotiated, rather than a litigated solution to a very real and serious land and jurisdictional claim between the Indian and Non-Indian communities.

I would particularly like to thank Senator Daniel Inouye and Congressman Norm Dicks for their efforts in helping the parties resolve their differences. Thank you for the opportunity to testify today in support of this legislation.

TESTIMONY BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
FEBRUARY 24, 1989
BY KARL J. ANDERSON, SECRETARY-TREASURER
COMMENCEMENT BAY TIDELAND OWNERS COMMITTEE

Chairman Inouye and distinguished members of the Senate Select Committee on Indian Affairs. I am Karl Anderson, Co-Founder and Secretary-Treasurer of the Commencement Bay Tideland Owners Committee, a non-profit corporation. I organized this corporation in July of 1984, after I became aware of the Puyallup Indian land claims. The purpose of the corporation is to work towards the resolution of the issues between the Puyallup Tribe of Indians and the non-Indian community, while representing the interests of private landowners in that process. We have a membership of 75 tideland business owners, of which 66 are family-owned local businesses. I, myself, am the Vice President and Treasurer of Concrete Technology Corporation, a family-owned business in the tideland area.

I have been personally involved in this endeavor for almost 5 years now, so it is a great honor and pleasure for me to appear before you today, in what we hope will be the final home stretch to complete a settlement agreement. I must admit that I was stunned when I first learned of the Indian claims and realized the magnitude of impact they would have once they were widely known in our community. I was asked to represent the private sector in the negotiations with the Puyallup Tribe of Indians. Agreeing to do this was equivalent to taking a leave of absence from my business because by actual count, I spent over 2,000 hours in direct negotiations and related activities over the next 15 months. A number of individuals who were aware of other attempts to resolve Indian claims cautioned that our objectives were impossible to achieve and predicted that our negotiations would be futile. Nevertheless, we pushed on and it seemed that all of our efforts were worthwhile when we succeeded in reaching an agreement with the Puyallup Tribal Council in October of 1985. Unfortunately, this agreement was eventually rejected by a tribal membership vote in February of 1986. Since that time, I have invested well over 1,000 additional hours in the efforts undertaken to revive negotiations and reach the settlement agreement which is before you

today. And Mr. Chairman, we are immensely grateful to you for the personal efforts you put into the process of bringing the parties back together again to reach this agreement. Without your assistance, we simply would not be here today.

My purpose in sharing this background with you is to convince you that I have detailed and extensive knowledge of the problems and issues which this settlement agreement will resolve. I also hope that by showing you the extent of my deep personal commitment to resolving these issues, I can help convince you that achieving this settlement is crucial to our community.

The tribal land claims which are impacting private landowners and business are the claims to ownership of the former riverbed lands within the 1857 Reservation and to the former tidelands which abutted that Reservation. The former riverbed lands are primarily occupied by homes, small farms, and neighborhood businesses. The total area of former riverbed land is estimated to be about 200 to 300 acres. However, the total area impacted by the riverbed claims is much larger because many of the affected individual land parcels contain only a slice of the former riverbed. The former tidelands are occupied by industrial and manufacturing operations, and some service businesses. The total area impacted by the former tideland claims is in the order of 3,000 acres.

The land claims are impacting us in three ways:

1. Sale of property. Because we cannot get title insurance without exceptions for Indian land claims, financial institutions are unwilling to accept such property as collateral for purchase loans. A few property sales are taking place because the seller will carry a contract or the buyer doesn't need to use the property as loan collateral. Since people and businesses come and go in the normal course of events, there are a number of vacant industrial sites in the former tidelands where no one has replaced the business which left. There are also homeowners in the former riverbed areas who are unable to move because they cannot sell their homes. There is no shortage of potential interested purchasers ...until they discover they cannot obtain bank financing.

2. Lease of property. Some properties available for lease are in need of improvements to meet tenant needs. However, bank financing dependent on the property as collateral is not available to pay for the improvements. In some cases, the tenant is willing to make the improvements based on a lower rent. However, this approach fails when the prospective tenant learns that the property owner cannot guarantee quiet enjoyment of the property for a period long enough to amortize the cost of the improvements.

3. Improvement loans. Many landowners have repaid considerable portions of their mortgages and so have significant equity in their property. They now find themselves unable to draw upon that equity for business improvement loans, because banks are unwilling to accept the property as loan collateral.

The multiple benefits of resolving the Indian land claims are obvious. However, the private sector is committed to making this settlement work for a number of other reasons. The Puyallup Tribe and its members will receive significant resources from the settlement. If used wisely, these resources will result in significant spin-off benefits to our entire community. Thus many business leaders are prepared to volunteer their advisory services to help the Tribe and its members. We will also benefit by helping bring the Tribe into the business, social and cultural mainstream of the community. And the Jobs Program will benefit us by adding to the available employment base. We conducted an initial jobs program between January and September of 1986, which resulted in 38 job offers to tribal members.

Resolution of these Indian land claims is one of the most important issues which faces our community. Many landowners who have been able to hang on for these past five years will begin to fall by the wayside if relief is not soon provided. These are not problems we created ourselves, they arise from events which took place over 130 years ago, but we have faced these problems and have put forth our best efforts to resolve them. We simply cannot go any farther to resolve these problems without your help. We implore you to move forward together with us on those last few steps needed to complete this settlement agreement.

Puyallup Riverbed Landowners Association

Richard Carkner, Chairman
Paul Veh, Vice Chairman
Linda Finns, Secretary-Treasurer

7824 River Road
Puyallup, WA 98371
(206) 922-1604

TESTIMONY BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS AND THE HOUSE COMMITTEE
ON INTERIOR AND INSULAR AFFAIRS
FEBRUARY 23 AND 24, 1989

by: Richard W. Carkner
Chairman, Puyallup Landowners Association

Mr. Chairman and Committee Members, I am Richard W. Carkner, Chairman of the Puyallup Riverbed Landowners Association and I ask that my testimony be added to the record.

The impact of unresolved claims by the Puyallup Tribe of Indians on our regional and national economy are well known. Businesses located on affected real estate are in a financial straight jacket. They are unable to borrow funds to maintain or expand their businesses. The Port of Tacoma is well positioned to serve expanding Pacific Rim markets, but is anchored by Indian claims.

What has received less attention is the severe problems these unresolved claims have on homeowners, small businesses and farms. Our committee was organized in 1985 after some 300 people met in a high school gym after receiving trespassing/eviction notices from the Puyallup Tribe.

The response from many homeowners was shock and disbelief -- how could this happen in America? Many owners have lived on the land for thirty years or more, raised their families and are now retired. Their homes are their major asset and to threaten them with eviction is a travesty. These home owners are responsible citizens who have paid their taxes, paid their mortgages and acted in good faith. These people had no knowledge of these claims and thought they had clear title to their property. Moreover, resolving these claims is completely beyond the control of these people. The actions or inaction of governments gave rise to these claims and the affected land owners are helpless to resolve them.

The impact on homeowners, small business and farmers ranges from actual major financial loss to severe mental anguish and hardship. We have documented cases where businesses have failed because they were unable to obtain financing due to clouded real estate titles. We have senior citizens who need to move to group facilities because they can no longer maintain their homes but can't sell because of title clouds. We have others who have deferred maintenance of their property because of the fear that they may lose their property.

These people didn't cause these problems and desperately need action by the Congress to resolve these issues. Thank you for your consideration.

Ken Eikenberry
ATTORNEY GENERAL OF WASHINGTON
7TH FLOOR HIGHWAYS-LICENSES BLDG., PO 7[illegible], OLYMPIA, WA 98504-8071

March 2, 1988

Honorable Norm Dicks
United States Congressman
2429 Rayburn House Office Building
Washington, D.C. 20515

Dear Norm:

In light of the lead role that you are performing in securing the necessary federal legislation to complete the Puyallup Land Claim Settlement, I am enclosing my letters of support direct to Senator Inouye and Representative Udall.

If I or my office can be of further assistance on this matter please advise.

Very truly yours,

KEN EIKENBERRY
Attorney General

KE:pm
Enc.

Ken Eikenberry
ATTORNEY GENERAL OF WASHINGTON
7TH FLOOR HIGHWAYS-LICENSES BLDG., PB 71, OLYMPIA, WA 98504-8071

March 2, 1988

Honorable Slade Gorton
United States Senator
324 Senate Hart Office Building
Washington, D.C. 20510

Dear Slade:

In light of the important role that you are performing in securing the necessary federal legislation to complete the Puyallup Land Claim Settlement, I am enclosing my letters of support direct to Senator Inouye and Representative Udall.

If I or my office can be of further assistance on this matter please advise.

Very truly yours,

KEN EIKENBERRY
Attorney General

KE:pm
Enc.

Ken Eikenberry
ATTORNEY GENERAL OF WASHINGTON
7TH FLOOR HIGHWAYS-LICENSES BLDG. PB 71, OLYMPIA, WA 98504-8071

March 2, 1988

Honorable Brock Adams
United States Senator
513 Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Adams:

In light of the role that you are performing in securing the necessary federal legislation to complete the Puyallup Land Claim Settlement, I am enclosing my letters of support direct to Senator Inouye and Representative Udall.

If I or my office can be of further assistance on this matter please advise.

Very truly yours,

KEN EIKENBERRY
Attorney General

KE:pm
Enc.

Ken Eikenberry
ATTORNEY GENERAL OF WASHINGTON
7TH FLOOR HIGHWAYS-LICENSES BLDG. PB 71, OLYMPIA, WA 98504-8071

March 2, 1989

Honorable Morris K. Udall
House Committee on Interior
and Insular Affairs
235 Cannon House Office Building
Washington, D.C. 20515-0302

RE: HB 932

Dear Congressman:

This letter is to voice support for House Bill 932, and urge that the House Committee on Interior and Insular Affairs approve the bill for passage. I was unable to be present in Washington, D.C. to offer testimony, and therefore would ask that this letter be made part of your committee record.

This legislation is the culmination of efforts over the last five years to resolve Puyallup tribal land claims which include parts of the second largest city in the State of Washington. These efforts have been made by the tribe, local governments, the State, private property owners, and federal officials. Each of the non-tribal interests are providing funds and undertakings to resolve this matter under a comprehensive settlement which has been approved by the tribe. The settlement also has been ratified by the local governments and private parties. The State Legislature is expeditiously acting to carry out the State's commitments under the settlement. The key linchpin for the final resolution is the pending federal legislation.

Under current federal law, neither private property owners, nor state or local governments, can seek a judicial resolution to determine the validity or invalidity of tribal land claims which cast a cloud on the title of properties. The only alternative to a comprehensive settlement is to await litigation to be commenced by the tribe. Such litigation by a tribe may be restricted to specific properties and such litigation can continue for years without fully and completely resolving the problems. Furthermore, the prospect of such litigation severely complicates attempts to develop a cooperative working relationship between local governments, State and private persons with the Puyallup Tribe. This settlement, which is contingent upon the implementing of federal legislation, will bring the controversy to an end and present an opportunity to constructively move forward.

The Puyallup Reservation in Pierce County was created prior to statehood by Presidential Executive Orders in 1856 and 1873. Later, under the Federal Allotment Acts, virtually all the property within the Reservation was sold and no longer has Indian trust status. When Washington became a state in 1889, under the Equal Footing Doctrine (Pollard v. Hagen, 44 U.S. 212 (1845), Washington became the owner of the beds of navigable waters and navigable streams which ownership was previously held by the United States. Subsequently, the State sold most of the former tidelands in the Commencement Bay area and those tidelands have been filled and are now utilized as dry land. The Puyallup River has been channelized, and the old riverbed which became dry land has been transferred by the State and subsequently much of it has been sold to private individuals and entities. Within the area of the Reservation as originally established, the State of Washington owns property including highways and beds of navigable waters. The State was the original grantor of some properties now held by private and public persons and entities in that area.

Land claims have been intermittently asserted by the Puyallup Tribe since early in the 1900s. See United States v. Ashton, 170 Fed. 509 (W. D. Wash. 1909), appeal dismissed 220 U.S. 604 (1910). More recently, in Puyallup Tribe v. Port of Tacoma, 717 F.2d 1251 (9th Cir. 1983), the Court upheld the claim of the Puyallup Tribe to be superior to that of the Port of Tacoma for a twelve-acre tract which was part of the old riverbed of the Puyallup River which had subsequently become dry land by virtue of the channelizing of the River. Even more recently, in Puyallup Tribe v. Union Pacific Railroad, et al., U.S. District Court (W.D. Wash.) No. C84-359TC, the Tribe asserted claims involving a portion of section 34, bordering on Commencement Bay, questioning the ownership and the boundary line of the Reservation.

These suits and claims have created a cloud on the property title for many public and private entities' lands within the boundaries of what was originally the Puyallup Indian Reservation. This cloud has made it difficult for landowners to obtain financing for improvements and limiting to some degree the marketability of the properties. Normally, when there is a cloud on the title of property which creates problems for the "owner," there is available a "quiet title action." Such an action can resolve any and all claims and thus permit a productive use of the property and quiet enjoyment thereof. However, when the claims which create a cloud are asserted by an Indian tribe, there is no opportunity to commence a quiet title action by the "owner." The United States Supreme Court, in U.S. v. U.S. Fidelity and Guarantee Co., 309 U.S. 506 (1940) has ruled that unless Congress has provided to the contrary, an Indian tribe is immune to suit without its consent. That sovereign immunity prevents forcing a tribe to litigate or abandon its claims to

property. Thus, when a cloud upon property is the result of a tribal claim, there is no forum available to remove the could unless the tribe chooses to litigate the issue. In the Puyallup situation, each action commenced by the tribe has been confined to a specifically defined parcel of land and thus designed to resolve the issues only with reference to that particular parcel.

In closing I would again like to urge the committee to approve this legislation for passage by the Congress to permit the implementation of this historic, comprehensive settlement.

Very truly yours,

KEN EIKENBERRY
Attorney General

jf

Ken Eikenberry
ATTORNEY GENERAL OF WASHINGTON
7TH FLOOR HIGHWAYS-LICENSES BLDG., PB 71, OLYMPIA, WA 98504-8071

March 2, 1989

Honorable Daniel Inouye
Senate Select Committee on
Indian Affairs
722 Senate Hart Office Building
Washington, D.C. 20510-1101

RE: SB 402

Dear Senator:

This letter is to voice support for Senate Bill 402, and urge that the Senate Select Committee on Indian Affairs approve the bill for passage. I was unable to be present in Washington, D.C. to offer testimony, and therefore would ask that this letter be made part of your committee record.

Because of your interest and your visits to the State of Washington, I hardly need to mention that this legislation is the culmination of efforts over the last five years to resolve Puyallup tribal land claims which include parts of the second largest city in the State of Washington. These efforts have been made by the tribe, local governments, the State, private property owners, and federal officials. Each of the non-tribal interests are providing funds and undertakings to resolve this matter under a comprehensive settlement which has been approved by the tribe. The settlement also has been ratified by the local governments and private parties. The State Legislature is expeditiously acting to carry out the State's commitments under the settlement. The key linchpin for the final resolution is the pending federal legislation.

Under current federal law, neither private property owners, nor state or local governments, can seek a judicial resolution to determine the validity or invalidity of tribal land claims which cast a cloud on the title of properties. The only alternative to a comprehensive settlement is to await litigation to be commenced by the tribe. Such litigation by a tribe may be restricted to specific properties and such litigation can continue for years without fully and completely resolving the problems. Furthermore, the prospect of such litigation severely complicates attempts to develop a cooperative working relationship between local governments, State and private persons with the Puyallup Tribe. This settlement, which is contingent upon the implementing of federal legislation, will bring the controversy

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Very truly yours,

Ken Eikenberry

KEN EIKENBERRY
Attorney General

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